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LETTER DATED 24 MAY 1994 FROM THE SECRETARY-GENERAL TO THE PRESIDENT OF THE SECURITY COUNCIL

By its resolution 780 (1992) of 6 October 1992, the Security Council requested me to establish a Commission of Experts to examine and analyse information gathered with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia. On 26 October 1992 I appointed a five-member Commission, chaired by Professor Frits Kalshoven and, following the latter's resignation, by Professor Cherif Bassiouni. My report on the establishment of the Commission of Experts was submitted to the Council on 14 October 1992 (S/24657).

The Commission commenced its activities in November 1992 and concluded its work in April 1994. During this period it has held 12 sessions and conducted a series of studies and on-site investigations, using for that purpose offers of assistance from Governments and non-governmental organizations. The Commission also established a database designed to provide a comprehensive record of all reported grave breaches of the Geneva Conventions and other violations of international humanitarian law. The two interim reports of the Commission, describing the status of its work and its preliminary conclusions were forwarded to the Security Council in my letters of 9 February 1993 (S/25274) and 5 October 1993 (S/26545).

The final report of the Commission includes a survey of the Commission's work since its inception, its mandate, structure and methods of work, its views on selected legal issues of particular significance in the context of the former Yugoslavia, a general study on the military structure of the "warring factions" and the strategies and tactics employed by them, and substantive findings on alleged crimes of "ethnic cleansing", genocide and other massive violations of elementary dictates of humanity, rape and sexual assault and destruction of cultural property committed in various parts of Bosnia and Herzegovina.

On the basis of the information gathered, examined and analysed, the Commission has concluded that grave breaches of the Geneva Conventions and other violations of international humanitarian law have been committed in the territory of the former Yugoslavia on a large scale, and were particularly brutal and ferocious in their execution. The practice of so-called "ethnic

cleansing" and rape and sexual assault, in particular, have been carried out by some of the parties so systematically that they strongly appear to be the product of a policy, which may also be inferred from the consistent failure to prevent the commission of such crimes and to prosecute and punish their perpetrators.

The final report includes several annexes containing reports of investigations and studies, which as a whole constitute an integral part of the report. In his letter to me of 6 May 1994, the Chairman of the Commission requested that the annexes be published, although for cost purposes and given their volume (approximately 3,000 pages) it was suggested that they be published in English only and funded from the remaining surplus in the Trust Fund of the Commission of Experts.

I have examined the final report carefully, and I fully concur with the conclusions reached by the Commission. I, therefore, consider that the Commission has discharged its mandate entrusted to it by the Security Council in its resolution 780 (1992), and I am confident that the material collected and analysed by the Commission will greatly facilitate the task of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in carrying out its mandate. Upon my instructions, the database and all of the information gathered by the Commission in the course of its work have been forwarded to the Office of the Prosecutor of the International Tribunal.

In accordance with paragraph 4 of Security Council resolution 780 (1992), I hereby transmit to the Council the final report of the Commission of Experts established pursuant to Security Council resolution 780 (1992). The annexes will be forwarded to members of the Council as soon as they become available.

(Signed) Boutros BOUTROS-GHALI

Annex

FINAL REPORT OF THE COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 780 (1992)

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I. MANDATE, STRUCTURE AND METHODS OF WORK

A. Mandate

1. On 6 October 1992 the Security Council adopted resolution 780 (1992), by which it requested the Secretary-General to establish a Commission of Experts to examine and analyse, inter alia, information submitted pursuant to Security Council resolutions 771 (1992) of 13 August 1992 and 780 (1992) of 6 October 1992, with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.

2. Furthermore, in its resolution 787 (1992) of 16 November 1992, the Security Council requested the Commission, inter alia, to pursue actively its investigations on this matter, in particular the practice of "ethnic cleansing".

3. Having considered the recommendations in the interim report of the Commission of Experts (S/25274, annex I (hereinafter first interim report)), the Security Council decided in its resolution 808 (1993) of 22 February 1993 that an international tribunal should be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. On 25 May 1993, the Council, by its resolution 827 (1993), acting under Chapter VII of the Charter of the United Nations, adopted the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 contained in the report of the Secretary-General (S/25704, annex). To this effect, the Council requested the Commission, pending the appointment of the Prosecutor of the International Tribunal, to continue on an urgent basis the collection of information relating to its mandate.

4. The Commission took note of references made to it by different organs and bodies of the United Nations system. Specifically, it took note of General Assembly resolution 47/147 of 18 December 1992, in which the Assembly reaffirmed that all persons who perpetrate or authorize crimes against humanity or other grave breaches of international humanitarian law are individually responsible for those breaches and that the international community would exert every effort to bring them to justice, and called upon all parties to provide all pertinent information to the Commission.

B. Composition

5. Pursuant to paragraph 3 of resolution 780 (1992), the Secretary-General submitted on 14 October 1992 a report to the Security Council (S/24657), in which he set out the manner in which he intended to implement the resolution. On 26 October 1992, the Secretary-General announced the appointment of the Chairman and four members of the Commission.

6. As of 26 October 1992, the Commission, whose members serve in their personal capacity, consisted of Mr. Frits Kalshoven (Netherlands) as Chairman,

Mr. M. Cherif Bassiouni (Egypt), Mr. William J. Fenrick (Canada), Mr. Kéba M'baye (Senegal) and Mr. Torkel Opsahl (Norway).

7. On 19 October 1993, owing to the resignation of Mr. Kalshoven for medical reasons and the untimely death of Mr. Opsahl, the Commission was reorganized. Subsequently, the Secretary-General appointed Mr. Bassiouni as Chairman and Ms. Christine Cleiren (Netherlands) and Ms. Hanne Sophie Greve (Norway) as new members.

C. Internal working methods

8. Internal working methods of the Commission were defined in its rules of procedure adopted in January 1993 (S/25274, annex I, appendix).

9. The Commission has held 12 sessions, at which it discussed a number of substantive, methodological and organizational problems related to its mandate. 1/ At its final session, the Commission unanimously adopted the present report.

10. Pursuant to rule 10, paragraph 1, of its rules of procedure, the Commission appointed rapporteurs for several general and specific questions. Thus, Mr. Bassiouni was appointed Rapporteur for the Gathering and Analysis of Facts; Mr. Fenrick, Rapporteur for On-site Investigations as well as Rapporteur on Issues of Law; and Ms. Greve, Rapporteur on the Prijedor Project. Mr. M'baye and Ms. Cleiren were assigned to study and report on the destruction of cultural property and on legal aspects of sexual assault, respectively.

11. Pursuant to rule 10, paragraph 2, of the rules of procedure, the Commission submitted two interim reports to the Secretary-General, which were approved by the Commission at its third and seventh sessions respectively (S/25274, annex I, and S/26545, annex (hereinafter second interim report)).

D. Funding of the work of the Commission

12. The resources to finance the work of the Commission were provided in part from the regular budget of the United Nations (Office of Legal Affairs) and the Trust Fund for the Commission of Experts established on 26 March 1993 pursuant to Security Council resolution 780 (1992).

13. While the Secretary-General had indicated that he would endeavour to meet the expenses of the Commission as far as possible through existing resources, the Commission was provided with additional funding for a period of 9 months, from 1 December 1992 to 31 August 1993. This funding covered the compensation and travel of the members, as well as the travel and subsistence of staff members assigned from the Office of Legal Affairs. The additional funding also provided for general temporary assistance and permitted the recruitment of two secretaries.

14. At the end of August 1993, after the expiration of the initial budget period, the Commission was informed that funds would be allocated to cover its

activities until 31 December 1993 from existing resources, namely, the budget of the Office of Legal Affairs.

15. At the beginning of 1994, the Commission was informed that there would be no allocation to cover the activities of the Commission from the regular budget and that only three Professional posts could be provided by the Office of Legal Affairs. All the other expenditures, including investigative missions and remuneration, travel and subsistence of the Secretariat staff, as well as remuneration of two secretaries and an administrative assistant, would be provided from the Trust Fund.

16. As stated above, the Secretary-General established on 26 March 1993 a Trust Fund to assist the Commission in its work. On 24 May 1993, he requested Governments to consider contributing to the Commission in terms of financial resources or personnel. The total amount of contributions to the Trust Fund was $1,320,631. The contributions to the Trust Fund, however, did not become effective before July/August 1993. Commission investigations were funded by the Trust Fund.

17. The Commission's database was financed exclusively through funds provided by DePaul University's International Human Rights Law Institute. That financing amounted to over $1 million as at 30 April 1994. 2/

E. Coordination and cooperation with other bodies and organizations

18. The Commission has endeavoured from the very beginning of its work to establish cooperation and coordination of its efforts with other United Nations bodies and intergovernmental and non-governmental organizations concerned with the situation in the territory of the former Yugoslavia. It has noted in particular the call of the Commission on Human Rights, contained in its resolution 1992/S-2/1 of 1 December 1992, for the closest possible coordination with the Special Rapporteur of the Commission, Mr. Tadeusz Mazowiecki.

F. Investigation methods employed by the Commission

19. The Commission employed three methods of investigation:

(a) Collection and analysis of information sent to or requested by the Commission;

(b) Undertaking of investigative missions in the territory of the former Yugoslavia or in other countries in order to obtain additional information, take testimony and, as far as possible, verify facts;

(c) Information gathering on behalf of the Commission by certain Governments in different countries.

1. Collection and analysis of information

20. Pursuant to the requests contained in Security Council resolutions 771 (1992) and 780 (1992) and through other sources, the Commission received over 65,000 pages of documentation, as well as printed and video information, containing allegations of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia (see annex I.A). In addition, the Commission has solicited documentation and supplemental information from various sources relating to the situation in the territory of the former Yugoslavia. The analysis of this large volume of allegations tends to confirm the reported large-scale victimization, although the Commission has not always been able to verify all the information contained in these reports.

21. From December 1992, the Commission set up a database designed to provide a comprehensive, consistent and manageable record of all reported alleged grave breaches of the Geneva Conventions and other violations of international humanitarian law being committed in the territory of the former Yugoslavia. The inputting of information into the database was effected in the International Human Rights Law Institute of DePaul University (Chicago, United States of America) under the supervision of the Rapporteur for the Gathering and Analysis of Facts, who was also the President of the Institute and the Chairman of the Commission. The information was received from several Governments, which made official submissions, as well as from intergovernmental and non-governmental bodies. In addition, it included information received from United Nations bodies. The database also contained information from open sources and media reports.

22. The database has been transferred to the Office of the Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

2. Investigative missions

23. The other investigation method employed by the Commission was to conduct investigative missions in the territory of the former Yugoslavia and in other countries that had received refugees from the former Yugoslavia, in order to obtain additional information and to verify facts.

24. The Commission has undertaken 32 missions with the aim of either preparing for investigations or conducting them (see annex I.B). In all cases, missions were used to obtain additional information pertaining to the Commission's mandate.

3. Information gathering on behalf of the Commission by certain Governments

25. Several Governments assisted the Commission in gathering evidence, particularly in their respective countries. They are: Austria, Germany, the Netherlands, Norway and the United States of America.

4. Confidentiality of information

26. The Commission received a number of confidential documents, especially testimonies of victims or of witnesses to grave breaches of international humanitarian law. In order to maintain the confidentiality of the information obtained, the Commission worked out a number of security procedures and took some practical measures to ensure them.

G. Plan of work of the Commission

27. The Commission, in its first interim report (S/25274, annex I, paras. 65 and 66), adopted a plan of work, which included:

(a) Updating of its database;

(b) Conducting selective in-depth investigations in the following areas:

(i) Mass killing and destruction of property;

(ii) Treatment of prisoners and detainees;

(iii) Systematic sexual assaults;

(iv) "Ethnic cleansing".

28. This plan of work was endorsed by the Secretary-General in his letter dated 9 February 1993 addressed to the President of the Security Council (ibid.).

29. Subsequently, the Commission added to its specific projects a special case study on Prijedor.

30. Owing to personnel and time constraints, as well as limited financial resources, the Commission was compelled to adopt a selective approach in its work. It was not practicable to investigate exhaustively or otherwise attempt to verify every allegation of a violation of international humanitarian law committed in the territory of the former Yugoslavia. In its choice and method of conducting research projects or investigations, the Commission endeavoured, at all times, to be both impartial and balanced.

H. Conclusion of the work of the Commission

31. In its resolution 827 (1993), the Security Council noted that pending the appointment of the Prosecutor for the International Tribunal for the former Yugoslavia, the Commission should continue on an urgent basis the collection of information relating to its mandate. 3/

32. On 14 December 1993, the Commission was informed that in the light of the establishment of the International Tribunal and the appointment of its Prosecutor, the Commission should finalize its report and complete the transfer of its files, documents and database to the Tribunal by 30 April 1994.

33. As part of the conclusion of its work, the Commission has prepared for the transition with the Tribunal. By a letter dated 2 March 1994, the then Deputy to the Under-Secretary-General in charge of the Office of Legal Affairs requested the Commission to transfer all information at its disposal to the Prosecutor's Office. The transfer of Commission documentation, files and equipment was completed by the time the present report was submitted to the Secretary-General.

I. Acknowledgements

34. The Commission wishes to acknowledge with gratitude the support it received from the following Governments: Austria, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Liechtenstein, Micronesia (Federated States of), Morocco, Netherlands, New Zealand, Norway, Slovenia, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

35. This support was in the nature of financial contributions to the Trust Fund, 4/ contributed personnel, officially submitted reports, assistance in taking testimony and general support of the Commission's investigations, particularly by the Governments of Croatia, Bosnia and Herzegovina, Slovenia and the Federal Republic of Yugoslavia.

36. The Commission also wishes to acknowledge the logistical and administrative support of the United Nations Protection Force (UNPROFOR).

37. Lastly, the Commission gratefully acknowledges the contributions of many non-governmental organizations, not all of which can be specifically referred to in this report (see annex I.C for a complete list), but two deserve particular mention: Physicians for Human Rights and Human Rights Watch Helsinki.

J. Nature of the report

38. The Commission's mandate is unique in the history of the United Nations. It is also significantly broad.

39. The present report reflects only part of the extensive work and analysis done by the Commission under difficult and restrictive circumstances. The more complete record of its work and findings is contained in the annexes, which the Commission considers to be an integral part of the report.

40. The Commission expects that the Secretary-General will publish the annexes so that the present report will be complete. 5/

II. APPLICABLE LAW

41. The Commission has chosen to comment on selected legal issues because of their particular significance for understanding the legal context related to violations of international humanitarian law committed in the territory of the former Yugoslavia. The Commission's mandate is to provide the Secretary-General with its conclusions on the evidence of such violations and not to provide an analysis of the legal issues. It will be for the International Tribunal to make legal findings in connection with particular cases.

A. International/non-international character of the conflict

42. Classification of the various conflicts in the former Yugoslavia as international or non-international depends on important factual and legal issues. If a conflict is classified as international, then the grave breaches of the Geneva Conventions, 6/ including Additional Protocol I, 7/ apply as well as violations of the laws and customs of war. The treaty and customary law applicable to international armed conflicts is well-established. The treaty law designed for internal armed conflicts is in common article 3 of the Geneva Conventions, Additional Protocol II of 1977, 8/ and article 19 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. 9/ These legal sources do not use the terms "grave breaches" or "war crimes". Further, the content of customary law applicable to internal armed conflict is debatable. As a result, in general, unless the parties to an internal armed conflict agree otherwise, the only offences committed in internal armed conflict for which universal jurisdiction exists are "crimes against humanity" and genocide, which apply irrespective of the conflicts' classification.

43. To date, the major conflicts in the territory of the former Yugoslavia have occurred in Croatia and in Bosnia and Herzegovina. Determining when these conflicts are internal and when they are international is a difficult task because the legally relevant facts are not yet generally agreed upon. This task is one which must be performed by the International Tribunal.

44. However, as indicated in paragraph 45 of its first interim report, the Commission is of the opinion that the character and complexity of the armed conflicts concerned, combined with the web of agreements on humanitarian law that the parties have concluded among themselves, justifies the Commission's approach in applying the law applicable in international armed conflicts to the entirety of the armed conflicts in the territory of the former Yugoslavia.

B. Grave breaches of the Geneva Conventions of 1949 and Protocols I and II

45. "Grave breaches" are specified major violations of international humanitarian law which may be punished by any State on the basis of universal jurisdiction. Grave breaches are listed in article 50 of the First Geneva Convention (wounded and sick), article 51 of the Second Geneva Convention (maritime), article 130 of the Third Geneva Convention (prisoners of war), and

article 147 of the Fourth Geneva Convention (civilians) of 1949. Grave breaches are also listed in articles 11, paragraph 4, and 85 of Additional Protocol I of 1977. The "grave breaches" provisions of the Geneva Conventions and Protocol I are only relevant during an international armed conflict. Common article 3 of the four Geneva Conventions and Additional Protocol II of 1977 are both applicable during internal armed conflicts, but neither of these documents makes any reference to grave breaches.

46. Under all four Conventions, grave breaches prohibit, inter alia, wilful killing, torture, rape or inhuman treatment of protected persons, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

47. In the case of prisoners of war, it is also a grave breach to compel a prisoner of war to serve in the forces of the hostile power or to deprive him of his rights to a fair and regular trial. In the case of civilians in the hands of the adverse party, it is also a grave breach to:

(a) Unlawfully deport or transfer a protected person;

(b) Unlawfully confine a protected person;

(c) Compel a protected person to serve in the forces of a hostile power;

(d) Wilfully deprive a protected person of the rights of fair and regular trial prescribed;

(e) Take hostages.

48. Article 11 of Additional Protocol I makes a number of medical practices grave breaches of the Protocol.

49. Under article 85, paragraph 3, of Additional Protocol I, the following acts constitute grave breaches if committed wilfully, in violation of the relevant provisions of the Protocol, and causing death or serious injury to body or health:

"(a) Making the civilian population or individual civilians the object of attack;

"(b) Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects ...;

"(c) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects ...;

"(d) Making non-defended localities and demilitarized zones the object of attack;

"(e) Making a person the object of attack in the knowledge that he is hors de combat;

"(f) The perfidious use ... of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol."

50. Additional Protocol I also provides, in article 85, paragraph 4 that certain acts are grave breaches when committed wilfully and in violation of the Conventions or Protocol, namely:

"(a) The transfer by an Occupying Power of parts of its own civilian population into occupied territory it occupies or the deportation or transfer of all or parts of the population of that territory within or out of this territory ...;

"(b) Unjustifiable delay in the repatriation of prisoners of war or civilians;

"(c) Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

"(d) Making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, ... the object of attack, causing as a result extensive destruction thereof, where there is no evidence of [prior use of such objects in support of the adverse party's military effort], and when such [places] are not located in the immediate proximity of military objectives;

"(e) Depriving any person protected by the Conventions [or the Protocol] of fair and regular trial."

51. It must be noted that the statute of the International Tribunal refers to grave breaches of the Geneva Conventions of 1949 in article 2 and to violations of the laws or customs of war in article 3. It does not refer explicitly to grave breaches of Additional Protocol I. Many of the grave breaches of Additional Protocol I also constitute violations of the laws and customs of war.

C. Customary international law of armed conflict

52. It is necessary to distinguish between customary international law applicable to international armed conflict and to internal armed conflict. The treaty-based law applicable to internal armed conflicts is relatively recent and is contained in common article 3 of the Geneva Conventions, Additional Protocol II, and article 19 of the 1954 Hague Convention on Cultural Property. It is unlikely that there is any body of customary international law applicable to internal armed conflict which does not find its root in these treaty provisions. It is probable that common article 3 would be viewed as a statement of customary international law, but unlikely that the other instruments would be so viewed. In particular, there does not appear to be a customary international

law applicable to internal armed conflicts which includes the concept of war crimes.

53. The body of customary international law applicable to international armed conflicts includes the concept of war crimes, and a wide range of provisions also stated in Hague Convention IV of 1907, the Geneva Conventions of 1949 and, to some extent, the provisions of Additional Protocol I.

54. It must be observed that the violations of the laws or customs of war referred to in article 3 of the statute of the International Tribunal are offences when committed in international, but not in internal armed conflicts.

D. Command responsibility

55. The Commission addressed the matter of command responsibility in paragraphs 51 through 53 of its first interim report as follows:

> "51. A person who gives the order to commit a war crime or crime against humanity is equally guilty of the offence with the person actually committing it. This principle, expressed already in the Geneva Conventions of 1949, applies to both the military superiors, whether of regular or irregular armed forces, and to civilian authorities.
>
> "52. Superiors are moreover individually responsible for a war crime or crime against humanity committed by a subordinate if they knew, or had information which should have enabled them to conclude, in the circumstances at the time, that the subordinate was committing or was going to commit such an act and they did not take all feasible measures within their power to prevent or repress the act.
>
> "53. Military commanders are under a special obligation, with respect to members of the armed forces under their command or other persons under their control, to prevent and, where necessary, to suppress such acts and to report them to competent authorities."

56. The Commission notes with satisfaction that article 7 of the statute of the International Tribunal uses an essentially similar formulation.

57. The doctrine of command responsibility is directed primarily at military commanders because such persons have a personal obligation to ensure the maintenance of discipline among troops under their command. Most legal cases in which the doctrine of command responsibility has been considered have involved military or paramilitary accused. Political leaders and public officials have also been held liable under this doctrine in certain circumstances.

58. It is the view of the Commission that the mental element necessary when the commander has not given the offending order is (a) actual knowledge, (b) such serious personal dereliction on the part of the commander as to constitute wilful and wanton disregard of the possible consequences, or (c) an imputation of constructive knowledge, that is, despite pleas to the contrary, the commander, under the facts and circumstances of the particular case, must have

known of the offences charged and acquiesced therein. To determine whether or not a commander must have known about the acts of his subordinates, one might consider a number of indices, including:

(a) The number of illegal acts;

(b) The type of illegal acts;

(c) The scope of illegal acts;

(d) The time during which the illegal acts occurred;

(e) The number and type of troops involved;

(f) The logistics involved, if any;

(g) The geographical location of the acts;

(h) The widespread occurrence of the acts;

(i) The tactical tempo of operations;

(j) The modus operandi of similar illegal acts;

(k) The officers and staff involved;

(l) The location of the commander at the time.

59. The military commander is not absolutely responsible for all offences committed by his subordinates. Isolated offences may be committed of which he has no knowledge or control whatsoever. As a fundamental aspect of command, however, a commander does have a duty to control his troops and to take all practicable measures to ensure that they comply with the law. The arguments that a commander has a weak personality or that the troops assigned to him are uncontrollable are invalid. In particular, a military commander who is assigned command and control over armed combatant groups who have engaged in war crimes in the past should refrain from employing such groups in combat, until they clearly demonstrate their intention and capability to comply with the law in the future. Thus, a commander has a duty to do everything reasonable and practicable to prevent violations of the law. Failure to carry out such a duty carries with it responsibility.

60. Lastly, a military commander has the duty to punish or discipline those under his command whom he knows or has reasonable grounds to know committed a violation.

E. Superior orders

61. In paragraph 54 of its first interim report, the Commission made the following statement:

> "54. A subordinate who has carried out an order of a superior or acted under government instructions and thereby has committed a war crime or a crime against humanity, may raise the so-called defence of superior orders, claiming that he cannot be held criminally liable for an act he was ordered to commit. The Commission notes that the applicable treaties unfortunately are silent on the matter. The Commission's interpretation of the customary international law, particularly as stated in the Nuremberg principles, is that the fact that a person acted pursuant to an order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact available to him."

62. The Commission notes with satisfaction that article 7, paragraph 4, of the statute of the International Tribunal adopts an essentially similar approach on this subject.

F. Reprisals

63. A reprisal must be distinguished from a simple act of retaliation or vengeance. An unlawful act committed under the guise of retaliation or vengeance remains unlawful, and the claim of retaliation or vengeance is no defence.

64. A reprisal is an otherwise illegal act resorted to after the adverse party has himself indulged in illegal acts and refused to desist therefrom after being called upon to do so. The purpose of a reprisal is to compel the adverse party to terminate its illegal activity. It must be proportionate to the original wrongdoing and must be terminated as soon as the original wrongdoer ceases his illegal actions. The proportionality is not strict, for if the reprisal is to be effective, it will often be greater than the original wrongdoing. Nevertheless, there must be a reasonable relationship between the original wrong and the reprisal measure.

65. However, reprisals against the following categories of persons and objects are specifically prohibited:

(a) The wounded, sick, personnel, buildings or equipment protected by the First Geneva Convention (art. 46);

(b) The wounded, sick and shipwrecked persons, the personnel, the vessels and equipment protected by the Second Geneva Convention (art. 47);

(c) Prisoners of war (Third Geneva Convention, art. 13 and Additional Protocol I, art. 44);

(d) Civilians in the hands of a party to the conflict of which they are not nationals, including inhabitants of occupied territory (Fourth Geneva Convention, art. 33 and Additional Protocol I, art. 73);

(e) Civilians (Additional Protocol I, art. 51, para. 6);

(f) Civilian objects (Additional Protocol I, art. 52, para. 1);

(g) Cultural objects and places of worship (Additional Protocol I, art. 53 (c));

(h) Objects indispensable to the survival of the civilian population (Additional Protocol I, art. 54, para. 4);

(i) The natural environment (Additional Protocol I, art. 55, para. 2);

(j) Works and installations containing dangerous forces (Additional Protocol I, art. 56, para. 4).

66. There is no ban on reprisals contained in common article 3 and Additional Protocol II applicable to internal armed conflict. In international armed conflicts to which the four Geneva Conventions and Additional Protocol I apply, lawful reprisals as defined above must be directed exclusively against combatants or other military objectives subject to the limitations contained in the Geneva Conventions, Protocol I and customary international law of armed conflicts. In international armed conflicts where Additional Protocol I does not apply, reprisals may be directed against a much wider category of persons and objects, but subject to the limitations of customary international law of armed conflicts.

G. Interference with humanitarian aid convoys

67. Interference with humanitarian aid convoys is a practice which has been all too prevalent in the various conflicts in the former Yugoslavia.

68. The Commission is of the view that, when and where the law relating to international armed conflicts applies, the provisions of article 54 of Additional Protocol I are also applicable. This article states in part:

"1. Starvation of civilians as a method of warfare is prohibited.

"2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away or for any other motive."

69. The use of starvation as a method of war, regardless of the modalities used, is also contrary to the customary law applicable in international armed conflicts.

70. The Commission also considers article 70, paragraphs 2 to 4, of Additional Protocol I to apply:

> "2. The parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse party.
>
> "3. The parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:
>
> "(a) Shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;
>
> "(b) May make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;
>
> "(c) Shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.
>
> "4. The parties to the conflict shall protect relief consignments and facilitate their rapid distribution."

71. The Commission deplores any acts taken to interfere with humanitarian aid convoys, as the safe and expeditious passage of these convoys is essential to the well-being of the civilian population.

H. Crimes against humanity

72. Article 5 of the statute of the International Tribunal affirms the competence of the International Tribunal to prosecute persons committing "crimes against humanity", which are defined as specified acts "committed in armed conflict, whether international or internal in character, and directed against any civilian population," such as national, political, ethnic, racial or religious groups.

73. The definition of "crimes against humanity" in article 5 of the statute codifies accepted principles of international law applicable erga omnes. As ascertained by the International Military Tribunal at Nuremberg, there are "elementary dictates of humanity" to be recognized under all circumstances. The General Assembly in its resolution 95 (I) of 11 December 1946 affirmed the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgement of the Tribunal. 10/

74. The Nuremberg application of "crimes against humanity" was a response to the shortcoming in international law that many crimes committed during the Second World War could not technically be regarded as war crimes stricto sensu on account of one or several elements, which were of a different nature. It was, therefore, conceived to redress crimes of an equally serious character and on a vast scale, organized and systematic, and most ruthlessly carried out.

1. Armed conflict

75. Crimes against humanity apply to all contexts. They are not, therefore, confined to situations of international armed conflict, but also apply to all armed conflicts including internal ones - civil wars and insurrection - and whatever casus mixtus may arise in between internal and international armed conflict. Thus, it includes all armed conflicts, whether they are of an international or non-international character. However, not every act committed by force of arms is an armed conflict; a genuine armed conflict has to be distinguished from a mere act of banditry or an unorganized and short-lived insurrection. Crimes against humanity are also no longer dependent on their linkage to crimes against peace or war crimes.

76. Articles 2 and 3 of the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 address grave breaches of the Geneva Conventions of 1949 and violations of the laws and customs of war. Article 5, which concerns crimes against humanity, contains minimum provisions which must be respected, a fortiori, whether or not articles 2 or 3 are applicable to a specific conflict.

2. Protected persons

77. Article 5 of the statute of the International Tribunal protects "any civilian population", which undoubtedly includes the whole of the populations of the area afflicted by the armed conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion. Refugees are not different from other civilians, and as such are protected within the meaning of "civilian population". "Civilian population" is used in this context in contradistinction to combatants or members of armed forces.

78. It seems obvious that article 5 applies first and foremost to civilians, meaning people who are not combatants. This however, should not lead to any quick conclusions concerning people who at one particular point in time did bear arms. One practical example: in the former Yugoslavia, large-scale arbitrary killings were one of the hallmarks of attacks by a given group. Information about such arbitrary killings was then used by the same group to instill fear and demand total subjugation of the other group in other areas as well. Many of the most barbarous onslaughts on villages started with heavy artillery bombardments followed by the villages being stormed by infantry in tandem, while paramilitary groups sought the inhabitants in each and every house. A head of family who under such circumstances tries to protect his family gun-in-hand does not thereby lose his status as a civilian. Maybe the same is the case for the

sole policeman or local defence guard doing the same, even if they joined hands to try to prevent the cataclysm. Information of the overall circumstances is relevant for the interpretation of the provision in a spirit consistent with its purpose. Under such circumstances, the distinction between improvised self-defence and actual military defence may be subtle, but none the less important. This is no less so when the legitimate authorities in the area - as part and parcel of an overall plan of destruction - had previously been given an ultimatum to arm all the local defence guards.

79. The International Military Tribunal at Nuremberg stated the following concerning crimes against humanity and the importance of the overall circumstances:

> "The defendant contends that stealing the personal property of Jews and other concentration camp inmates is not a crime against humanity. But under the circumstances which we have here related [emphasis added], this plea is and must be rejected. What was done was done pursuant to a government policy, and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing of the loot must be exonerated and held not guilty as a participant in the murder plan. Without doubt all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity." 11/

80. It is significant to note that Protocol II to the Geneva Conventions of 1949 Relating to the Protection of Victims of Non-International Armed Conflicts addresses "fundamental guarantees" in article 4 and includes in the protected group "all persons who do not take a direct part or who have ceased to take part in hostilities".

3. Acts constituting crimes against humanity

81. The different acts constituting crimes against humanity are enumerated in article 5 of the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. Such acts are: "murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts". "Other inhumane acts" covers serious crimes of a nature similar to the other crimes cited. It is not equally obvious if the eiusdem generis principle of interpretation will rule out a wider interpretation. It is necessary to ascertain that the acts included in the concept of "crimes against humanity" correspond to what is already considered part of international customary law.

82. In the context of crimes against humanity, it is relevant to observe that the same kind of prohibited acts listed in common article 3 (relevant to conflicts not of an international character) in the four Geneva Conventions of 1949, and in Protocol II to the Geneva Conventions are mere codification of

elementary dictates of humanity. Article 3 prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituent court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples". Article 4 bans "violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishment; taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assaults; slavery and the slave trade in all their forms; pillage; and threats to commit any of the foregoing acts". The former Yugoslavia signed Protocol II on 11 June 1979 and ratified it that same day, without reservations, declarations or objections.

83. Crimes against humanity are not confined to situations where there exists an intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, which are preconditions for genocide. Crimes against humanity are, however, serious international violations directed against the protected persons, in contradistinction to a fate befalling them merely as a side-effect, for example, of a military operation dictated by military necessity.

4. Widespread and systematic nature of the acts

84. Isolated acts constituting offences, such as extra-judicial executions or other common crimes punishable under municipal law, do not qualify as crimes against humanity by themselves. The acts must be part of a policy of persecution or discrimination. In addition, the acts must be carried out in a systematic way or by means of a mass action. Thus, the number of victims and perpetrators are characteristically high. Because the perpetrators have a common plan containing the elements described above, they need not resort to the same means or acts against their victims. It is the systematic process of victimization against the protected group which is essential. For example, a number of interviewees reported that some persons had been crucified, but it is not necessary that all victims of the protected group be crucified or that this particular inhumane act be recognized in and of itself to be part of a crime against humanity. It is the overall context of large-scale victimization carried out as part of a common plan or design which goes to the element of systematicity.

85. It should be noted that the ensuing upsurge in crimes that follows a general breakdown of law and order does not qualify as crimes against humanity. However, a general breakdown in law and order may be a premeditated instrument, a situation carefully orchestrated to hide the true nature of the intended harm. Thus, it should not be accepted at face value that the perpetrators are merely uncontrolled elements, especially not if these elements target almost exclusively groups also otherwise discriminated against and persecuted. Unwillingness to manage, prosecute and punish uncontrolled elements may be

another indication that these elements are, in reality, but a useful tool for the implementation of a policy of crime against humanity.

86. Crimes against humanity may also amount to extermination of national, ethnical, racial, religious or other groups, whether or not the intent that makes such crimes punishable as genocide can be proven. They may also, through inhumane acts, amount to large-scale human degradation. The scale and nature of such crimes become of special significance and of concern to the international community because of the abhorrent character of the overall policy, the means employed to carry out the policy and the number of victims it produces.

I. Genocide

87. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide states that "genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world", and that "at all periods of history genocide has inflicted great losses on humanity". 12/

88. The Convention was manifestly adopted for humanitarian and civilizing purposes. Its objectives are to safeguard the very existence of certain human groups and to affirm and emphasize the most elementary principles of humanity and morality. In view of the rights involved, the legal obligations to refrain from genocide are recognized as erga omnes.

89. When the Convention was drafted, it was already envisaged that it would apply not only to then existing forms of genocide, but also "to any method that might be evolved in the future with a view to destroying the physical existence of a group". 13/ As emphasized in the preamble to the Convention, genocide has marred all periods of history, and it is this very tragic recognition that gives the concept its historical evolutionary nature.

90. The Convention must be interpreted in good faith, in accordance with the ordinary meaning of its terms, in their context, and in the light of its object and purpose. Moreover, the text of the Convention should be interpreted in such a way that a reason and a meaning can be attributed to every word. No word or provision may be disregarded or treated as superfluous, unless this is absolutely necessary to give effect to the terms read as a whole. 14/

91. Genocide is a crime under international law regardless of "whether committed in time of peace or in time of war" (art. I). Thus, irrespective of the context in which it occurs (for example, peace time, internal strife, international armed conflict or whatever the general overall situation) genocide is a punishable international crime.

92. The acts specified in the Convention must be "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (art. II).

1. The extent of destruction of a group

93. Destruction of a group in whole or in part does not mean that the group in its entirety must be exterminated. The words "in whole or in part" were inserted in the text to make it clear that it is not necessary to aim at killing all the members of the group. 15/

94. If essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others - the totality per se may be a strong indication of genocide regardless of the actual numbers killed. A corroborating argument will be the fate of the rest of the group. The character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose. Similarly, the extermination of a group's law enforcement and military personnel may be a significant section of a group in that it renders the group at large defenceless against other abuses of a similar or other nature, particularly if the leadership is being eliminated as well. Thus, the intent to destroy the fabric of a society through the extermination of its leadership, when accompanied by other acts of elimination of a segment of society, can also be deemed genocide.

2. The groups protected

95. National, ethnical, racial or religious groups are all protected. The different groups relevant to the conflict in the former Yugoslavia - the Serbs, the Croats, the Muslims, the Gypsies and others - all have status as ethnic groups, and may, at least in part, be characterized by religion, ethnicity and nationality. It is not a condition that the victim group be a minority, it might as well be a numerical majority.

96. If there are several or more than one victim groups, and each group as such is protected, it may be within the spirit and purpose of the Convention to consider all the victim groups as a larger entity. The case being, for example, that there is evidence that group A wants to destroy in whole or in part groups B, C and D, or rather everyone who does not belong to the national, ethnic, racial or religious group A. In a sense, group A has defined a pluralistic non-A group using national, ethnic, racial and religious criteria for the definition. It seems relevant to analyse the fate of the non-A group along similar lines as if the non-A group had been homogenous. This is important if, for example, group B and to a lesser degree group C have provided the non-A group with all its leaders. Group D, on the other hand, has a more marginal role in the non-A group community because of its small numbers or other reasons. Genocide, "an odious scourge" which the Convention intends "to liberate mankind from" (preamble), would as a legal concept be a weak or even useless instrument if the overall circumstances of mixed groups were not

covered. The core of this reasoning is that in one-against-everyone-else cases the question of a significant number or a significant section of the group must be answered with reference to all the target groups as a larger whole.

3. Intent

97. It is the element of intent to destroy a designated group in whole or in part, which makes crimes of mass murder and crimes against humanity qualify as genocide. To be genocide within the meaning of the Convention, the crimes against a number of individuals must be directed at their collectivity or at them in their collective character or capacity. This can be deduced from the words "as such" stated in article II of the Convention (see para. 92 above). In most countries, penal codes do not regard motives, rather only intent, as the subjective or mental constituent element of a crime. Motive and intent may be closely linked, but motive is not mentioned in the Convention. The necessary element of intent may be inferred from sufficient facts. In certain cases, there will be evidence of actions or omissions of such a degree that the defendant may reasonably be assumed to have been aware of the consequences of his or her conduct, which goes to the establishment of intent, but not necessarily motive.

4. Acts constituting the crime of genocide

98. The different acts constituting the crime of genocide are enumerated in article II of the Convention. Such acts are: "killing members of a national, ethnical, racial or religious group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group". Each of these categories of acts can constitute the crime of genocide, as could any combination of these acts.

5. Punishable acts

99. Article III of the Convention lists the punishable acts as being: "genocide, conspiracy to commit genocide, direct or public incitement to commit genocide, attempt to commit genocide and complicity in genocide". This enumeration indicates how far the crime needs to have advanced before it becomes punishable. For example, an attempt will suffice. Secondly, it describes what kind of involvement in actual genocide may result in penal responsibility under the Convention. Thus, criminal responsibility extends to those involved in incitement, conspiracy and attempt, as well as individuals actually executing the specific acts prohibited by the Convention. Political masterminds or propaganda people are no less responsible than the individuals who perform the actual carnage. There are, therefore, several legal bases for criminal responsibility of individuals who engage in or are part of the various aspects of genocide.

6. Culpability

100. It is explicitly stated in the Convention that people who have committed genocide shall be punished whether they are "constitutionally responsible rulers, public officials or private individuals" (art. IV). Public officials include both civilian and military personnel and everyone who holds (or held) a public office - be it legislative, administrative or judicial. To meet the aims of the Convention, people in the said categories must be treated equally irrespective of their de jure or de facto positions as decision-makers. As individuals, they are subject to prosecution like any other individual violator. They cannot hide behind any shield of immunity. The legal and moral responsibilities are the same and the need to prevent genocide no less clear because of the position of the violator.

7. The statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

101. Article 4 of the statute of the International Tribunal affirms the competence of the International Tribunal to prosecute persons committing genocide. The definition of genocide in article 4 of the statute is identical to the provisions of the Genocide Convention.

J. Legal aspects of rape and other sexual assaults 16/

102. Rape constitutes a crime under international humanitarian law as well as under the criminal laws of the various republics which constituted the former Yugoslavia. It is also part of the substantive applicable law of the statute of the International Tribunal where it is referred to in several articles. 17/

103. Unlike most codified penal laws in the world, in international humanitarian law rape is not precisely defined. But on the basis of the contemporary criminal laws of the world's major criminal justice systems, the Commission considers rape to be a crime of violence of a sexual nature against the person. This characteristic of violence of a sexual nature also applies to other forms of sexual assault against women, men 18/ and children, 19/ when these activities are performed under coercion or threat of force and include sexual mutilation. 20/ It should be noted that irrespective of their definition, acts of sexual assault against women, men and children are prohibited by international humanitarian law through normative provisions prohibiting violence against the physical integrity and dignity of the person. Therefore, rape and other sexual assaults are covered in pari materia.

104. Even though sexual assaults imply the commission of the crime by a given perpetrator, persons who do not perform the act but are indirectly involved in the commission of this crime, like decision-makers and superiors, are also responsible under the Genocide Convention (art. III) and general norms of command responsibility (see paras. 55-60).

105. Violations of the laws and customs of war applicable to conflicts of an international character are contained in a number of international instruments. The Hague Convention (IV) Respecting the Laws and Customs of War on Land deals with the question of sexual assaults in article 46: "Family honour and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected." The Fourth Geneva Convention explicitly prohibits rape in article 27. The Commission deems that article 147 of the same Convention on "grave breaches" includes rape and other sexual assaults as constituting "torture or inhumane treatment" and that they are also prohibited because they are among those acts "wilfully causing great suffering or serious injury to body or health". Furthermore, Protocol I to the Geneva Conventions contains in article 76 an express prohibition of rape and other sexual assaults. In addition, such practices which are based on racial discrimination also constitute "grave breaches" under article 85, paragraph 4 of Protocol I, which holds that "inhuman and degrading practices involving outrage upon personal dignity, based on racial discrimination" are prohibited. It is also considered that article 27 of the Fourth Geneva Convention constitutes part of customary international law, thus also establishing a basis for universal jurisdiction. Furthermore, it should be noted with respect to Protocol I, that the provisions of article 85, when violated on the basis of racial discrimination, also constitute a violation of customary international law. Under all of these provisions, a single act of rape or sexual assault constitutes a war crime. As a "grave breach", this type of violation falls under universal jurisdiction. The perpetrator, however, must be a person who is linked to one of the parties to the conflict and the victim must be linked to another party to the conflict or be a citizen of a neutral State. It is also held that article 76 of Protocol I is applicable to victims who are not protected by other provisions of the four Geneva Conventions.

106. With respect to provisions applicable to conflicts of a non-international character, common article 3 to the four Geneva Conventions applies, as does article 4, paragraph 2 of Protocol II. Both of these provisions include a prohibition against rape and other sexual assaults in so far as they constitute wilful injury to the person. A single act is enough to constitute such a violation when the perpetrator is linked to one of the parties to the conflict and the victim is linked to another party to the conflict or is a citizen of a neutral State. Under Protocol II, such prohibited acts constitute a violation when the conflict takes place "in the territory of a High Contracting Party between its armed forces and dissident forces or other organized groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol" (art. 1, para. 1).

107. Two other sources of international humanitarian law apply to the prohibition of sexual assault and rape irrespective of the nature and characterization of the conflict. They are the conventional and customary law of "crimes against humanity" and the Genocide Convention. With respect to crimes against humanity, sexual assaults and rape fall within the meaning of other inhumane acts. However, the prohibited conduct must be part of an overall policy of persecution based on ethnic or religious grounds against a civilian population. Under the Genocide Convention, sexual assault and rape are included within the meaning of article II of the Convention, provided that the prohibited

conduct is committed as part of an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group". Under both crimes against humanity and the Genocide Convention, such prohibited acts are subject to universal jurisdiction. It is also well-established that both of these sources of international humanitarian law are considered part of jus cogens and are, therefore, binding under customary international law.

108. The parties to this conflict are bound by the four Geneva Conventions of 12 August 1949 and Additional Protocols I and II, both under State succession and by the parties' specific accession thereto. The parties are also bound by the Genocide Convention under State succession in so far as that convention has been ratified by the former Federal Republic of Yugoslavia. The parties are bound by that Convention under jus cogens and customary international law. The parties are also bound under jus cogens and customary international law by the obligations arising under crimes against humanity, as developed in conventional and customary international law.

109. The Commission concludes that there is no doubt about the prohibition of rape and sexual assault in the Geneva Conventions and other applicable sources of international humanitarian law. Furthermore, the Commission finds that the relevant provisions of the statute of the International Tribunal adequately and correctly state the applicable law to this crime.

III. GENERAL STUDIES

A. The military structure of the warring factions and the strategies and tactics they employ

110. The military conflicts in the former Yugoslavia must be examined on the basis of their evolution, which involved different parties at various times, operating in separate, though frequently interrelated, theatres of operation.

111. The first phase involved the conflict in Slovenia. The conflict began when that Republic declared its independence from the former Yugoslavia on 25 June 1991. That conflict involved the Yugoslav People's Army (JNA), Slovenia Territorial Defence Forces - Slovenian troops who left JNA to join the newly created Slovenian Army - and local Slovenian Police. This phase lasted for only a few weeks, in June and July 1991.

112. The second phase of the conflict, involving Croatia, started before that Republic officially declared its independence on 25 July 1991. On one side, that conflict involved JNA, Serb militia in Krajina and in eastern and western Slavonia, special forces from Serbia (with the participation of Serb expatriates and mercenaries), local special forces, and Serb police and armed civilians from the same areas. On the other side, the newly formed Croatian Army consisted of Croatian troops who left JNA, the Croatian National Guard, local militia; special forces consisting of expatriate Croats and mercenaries, and local Croatian police and armed civilians. After November 1991, JNA formally withdrew from Croatia, but continued to support the newly formed, self-proclaimed "Serb Republic of Krajina" army. Meanwhile, the newly established Republic of Croatia had formed its army, the Croatian Army, which, along with Croatian special

forces and others, continued the armed conflict in what became the United Nations protected areas (UNPAs) in Croatia.

113. The third phase of the conflict began in Bosnia and Herzegovina following its declaration of independence on 6 March 1992. It simultaneously involved fighting between Croatian and Bosnian Government forces, Bosnian Government and Serbian forces, and Croatian and Serbian forces. The Croatian Defence Council forces in the Bosnian and Herzegovina are supported by the Croatian Army, local Croatian police, volunteer civilians and "special forces" like the military wing of the Croatian Party of Rights (HOS) (named after the former Ustashis of the Second World War, who also fought against the Serbs in the Krajina area). Other Croatian armed civilian forces operate essentially in local areas. At first, the Bosnian Government and JNA opposed each other. This lasted from April to June 1992, during which time the JNA troops from Serbia and Montenegro "officially" withdrew from Bosnia and Herzegovina, leaving behind JNA Serbian troops from Bosnia and their equipment. They were supplemented by "special forces" from Serbia which consisted of expatriate volunteers and mercenaries, Bosnian-Serb militia and police, and Serb volunteers.

114. At the early stages of the conflict, most of the combatants, including those in the regular army, did not wear distinctive uniforms, emblems or insignias of rank. As a result, officers freely moved from army to militia and from one unit to another. To further complicate matters, at the early stages of the conflict between: (a) Croatia and the Federal Republic of Yugoslavia and other Serb forces within Croatia, and (b) between Bosnia and Herzegovina and the Federal Republic of Yugoslavia and other forces within Bosnia and Herzegovina (in May 1992, JNA forces from the Federal Republic of Yugoslavia officially withdrew from Bosnia), the "order of battle" of almost all army and militia units was not clearly established. The chain of command was significantly blurred, even to insiders. Consequently, the organizations' "command and control" structures were seriously eroded, which resulted in much confusion. The confusion was more pronounced in Bosnia among Serb combatants, but seems to have been purposely kept that way for essentially political reasons.

115. When each of the three Republics of Slovenia, Croatia and Bosnia and Herzegovina respectively declared their independence, 21/ they did not have a separate army. Previously, the Yugoslavian People's Army (JNA), also referred to as the Yugoslavian National Army, was a single unitary army for all members of the former Yugoslavia. The armies of the "warring factions" consisted mainly of military personnel and equipment of the former JNA.

116. Each of these republics had local territorial defence forces (TDF) 22/ which were part of the total defence systems of the Federal Republic of Yugoslavia. The republics also had local police forces consisting of personnel from their respective republics.

117. Upon the successive declarations of independence of these three republics, some of the military personnel of JNA (who had been located in each of these republics) left JNA and reconstituted themselves as part of the newly created national armies of Slovenia, Croatia and Bosnia and Herzegovina. 23/ JNA "officially" withdrew from Croatia in November 1991 and from the Bosnia and Herzegovina between May and June 1992. Throughout this period, JNA was

reorganized several times by the Federal Republic of Yugoslavia. As of May 1992, JNA - now called the Yugoslav Army - consisted essentially of troops from the Republics of Serbia and Montenegro. These two Republics form the successor federal union to the former Yugoslavia.

118. In addition to the regular armies mentioned above, there are three additional armies: the Bosnian-Serb Army, which operates in Bosnia and Herzegovina; the Serbian Army of Croatia, which operates in Croatia; and the Croatian Defence Council, which operates primarily outside the border of the Republic of Croatia, and mostly in Bosnia and Herzegovina. The first two were at one time and may still be armed and supported by JNA (now the Yugoslav Army) and the third may have been armed and supported by the Croatian Army.

119. The territorial defence forces (TDFs) are known as militia). In the case of Croatia, TDFs were known as the Croatian National Guard. The TDFs have a separate command structure from the regular army. Nevertheless, they join in the armed conflict, frequently operating with the regular army and under regular army officers' command. They also operate independently in certain geographic areas, usually where most of the personnel in these units came from.

120. In addition, two other types of paramilitary groups and formations are also engaged in military operations. They consist of: (a) what are called "special forces", and (b) local police forces augmented by local armed civilians. All the warring factions make use of such forces among their combatants, but the lines of authority and the structure of command and control are confusing, even to the combatants.

121. There are 45 reported special forces, which usually operate under the command of a named individual and apparently with substantial autonomy, except when they are integrated into the regular army's plan of action. 24/ The special forces are supplied and often trained by the respective Governments that they serve. Many special forces answer only to senior political officials in the respective Governments. Such a relationship is frequently based on political allegiance and is not always publicly known. However, in time, information about the political sponsorship and support of these groups will become available. As these units usually operate independently and outside the apparent chain of command, their order of battle is not known. Notwithstanding the strong links between these units and the respective armies, the regular army failed to restrain them from the commission of grave breaches of the Geneva Conventions and other violations of international humanitarian law. Among the most notorious of the special forces are Arkan's "Tigers" 25/ and Šešelj's "White Eagles" (also referred to as "Chetniks"). 26/ Lastly, many of these units operate throughout the territory of the former Yugoslavia. Thus, the Serbian units operate in Bosnia and Herzegovina and Croatia, and the Croatian units in Bosnia and Herzegovina. These special forces have committed some of the worst violations of international humanitarian law (see paras. 129-150, 236-237, and 216-231 below).

122. Some towns and villages formed paramilitary units, which are not to be confused with the special forces mentioned above. These local forces operate in the areas of their towns and villages. Occasionally, they also lend support to similar groups and other combatants in the same opština (county) and

neighbouring areas. Their command and control is local, and the chain of command difficult to establish, though characteristically these groups, like the special forces, have an identifiable leader. Frequently, the unit or group is called by the leader's name. Otherwise, the unit or group uses a politically significant name or the name of their town, village or area. The leadership is local, mostly consisting of political figures. These units, particularly among Serbs in Bosnia and Herzegovina and Croats in Krajina, have, like the special forces, committed many violations of international humanitarian law (see paras. 129-150). The police, augmented by "volunteer" armed civilians, also participate in military activities. These forces operate within a given municipality. They are nominally under the overall control of the Ministry of Interior. Furthermore, the respective ministries of interior also have national and regional police units, which usually operate outside the boundaries of local municipalities. The relationship between national, regional and local police is not always clear and varies in each country, and sometimes within the regions of each country. During the early stages of the conflicts in Croatia and in Bosnia and Herzegovina, the police, augmented by "volunteer" armed civilians, operated without apparent command and control from the army. Their leadership was local and included many political figures. These forces acted with almost complete autonomy in their respective areas. They also share responsibility with the special forces described above.

123. The situation consists of a multiplicity of combatant forces (for example, regular armies, militias, special forces, police and armed civilians) operating within different structures or outside any structure. These forces sometimes operate under no command and control. They may be without uniforms, emblems or insignias. Frequently, these forces merge or combine in connection with certain operations. Probably the only factor common to all of these forces is their receipt of military equipment, ammunition and supplies from their respective armies and other governmental sources.

124. The outcome of such a structure and the strategies and tactics employed help to blur the chain of command and conceal responsibility. This concealment may well be intended by some of the parties to provide a shield of plausible deniability.

125. All parties to the conflict have specifically adhered to the Geneva Conventions of 12 August 1949 and Additional Protocols I and II thereto. 27/ Furthermore, the Federal Republic of Yugoslavia is a signatory to these Conventions, and all of the parties to the conflict concede that they are also bound by these obligations under the international law of State succession.

126. The Federal Criminal Code of the former Yugoslavia embodied the international rules of armed conflict. JNA military personnel were instructed accordingly. Thus, grave breaches of the Geneva Conventions and other violations of international humanitarian law are part of the applicable national laws of all warring factions.

127. All of the combatant forces, in significantly different degrees, have committed grave breaches of the Geneva Conventions.

128. The grave breaches of the Geneva Conventions and other violations of international humanitarian law occurring in this conflict are, in part, the product of the military structure that results in a lack of effective command and control. The violations are also the result of the strategies and tactics employed by the warring factions.

B. "Ethnic cleansing" 28/

129. In its first interim report (S/25274), the Commission stated:

> "55. The expression 'ethnic cleansing' is relatively new. Considered in the context of the conflicts in the former Yugoslavia, 'ethnic cleansing' means rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area. 'Ethnic cleansing' is contrary to international law.
>
> "56. Based on the many reports describing the policy and practices conducted in the former Yugoslavia, 'ethnic cleansing' has been carried out by means of murder, torture, arbitrary arrest and detention, extra-judicial executions, rape and sexual assaults, confinement of civilian population in ghetto areas, forcible removal, displacement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property. Those practices constitute crimes against humanity and can be assimilated to specific war crimes. Furthermore, such acts could also fall within the meaning of the Genocide Convention.
>
> "57. The Commission is mindful of these considerations in the examination of reported allegations."

130. Upon examination of reported information, specific studies and investigations, the Commission confirms its earlier view that "ethnic cleansing" is a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. To a large extent, it is carried out in the name of misguided nationalism, historic grievances and a powerful driving sense of revenge. This purpose appears to be the occupation of territory to the exclusion of the purged group or groups. This policy and the practices of warring factions are described separately in the following paragraphs.

131. With respect to the practices by Serbs in Bosnia and Herzegovina and Croatia, "ethnic cleansing" is commonly used as a term to describe a policy conducted in furtherance of political doctrines relating to "Greater Serbia". The policy is put into practice by Serbs in Bosnia and Herzegovina and Croatia and their supporters in the Federal Republic of Yugoslavia. The political doctrine consists of a complex mixture of historical claims, grievances and fears and nationalistic aspirations and expectations, as well as religious and psychological elements. 29/ The doctrine is essentially based on ethnic and religious exclusivity and the dominance of Serbs over other groups in certain historically claimed areas. These views contrast with ethnic and religious

pluralism. This doctrine breeds intolerance and suspicion of other ethnic and religious groups and is conducive to violence when it is politically manipulated, as has been the case.

132. It should be emphasized that this policy and the manner in which it is carried out is supported only by some Serbs. In addition, the Commission emphasizes that responsibility for criminal conduct must be determined on an individual basis. 30/

133. The manner in which the policy of "ethnic cleansing" is carried out by Serbs in Bosnia is consistent throughout a certain geographic area represented by an arc ranging from northern Bosnia and covering areas in eastern and western Bosnia adjoining the Serb Krajina area in Croatia. 31/ The practice of "ethnic cleansing" is carried out in strategic areas linking Serbia proper with Serb-inhabited areas in Bosnia and Croatia. This strategic factor is significantly relevant to understanding why the policy has been carried out in certain areas and not in others. 32/

134. The coercive means used to remove the civilian population from the above-mentioned strategic areas include: mass murder, torture, rape and other forms of sexual assault; severe physical injury to civilians; mistreatment of civilian prisoners and prisoners of war; use of civilians as human shields; destruction of personal, public and cultural property; looting, theft and robbery of personal property; forced expropriation of real property; forceful displacement of civilian population; and attacks on hospitals, medical personnel and locations marked with the Red Cross/Red Crescent emblem.

135. Many of these acts of violence are carried out with extreme brutality and savagery in a manner designed to instil terror in the civilian population, in order to cause them to flee and never to return. 33/ This is evidenced by the large number of purposeful and indiscriminate killings, rape and sexual assaults, and other forms of torture committed against civilians and prisoners of war, both inside and outside detention facilities. These acts are also highly publicized by the perpetrators in order to achieve a terror-inspiring effect on others and cause them to flee.

136. Other noteworthy practices are widespread destruction of villages by systematically burning them to the ground and blowing up all the houses and structures in a given area. This includes cultural and religious monuments and symbols. The purpose of this destruction is to eradicate cultural, social and religious traces that identify the ethnic and religious groups. In the cases where the practices described above do not occur, these groups are forced to leave under duress by reason of a well-founded fear for their personal security.

137. Another recurring practice is to force civilian inhabitants to sign over their property as a condition of their departure or removal to other areas. Mayors and public officials, including the police, are frequently involved in this practice. 34/

138. Two additional factors also indicate the existence of a policy of "ethnic cleansing": (a) the wholesale and surreptitious departure of the Serbian population living in certain areas, which are to be "ethnically cleansed",

before the acts described above take place; 35/ and (b) the practices reported occur under the supervision of a "crisis committee" (Krisni Stab), comprised of local political leaders, police and others, which made such decisions with the direct or indirect involvement and support of the Bosnian-Serb Army. 36/

139. Special forces (see paras. 121-122) frequently carry out "ethnic cleansing". These forces clearly seem to be supported, equipped and supplied by the Governments they serve and are allowed to operate without control by the authorities in charge. Two particular groups of special forces that have committed the largest number of reported violations are Arkan's Tigers and Šešelj's White Eagles (see para. 121).

140. The study of the Prijedor district described in paragraphs 151 to 182 below, reveals the extent of the policy of "ethnic cleansing" and the manner in which it was systematically carried out together with the local and regional authorities. 37/ The same patterns and practices described in the study on the district of Prijedor repeatedly occurred in many opštinas, such as Banja-Luka, Brčko, Foča and Zvornik, about which the Commission received significant information supporting the above conclusions. 38/

141. Three additional observations are noteworthy:

(a) JNA and the Army of the so-called "Bosnian Serb Republic" 39/ have been involved in carrying out and facilitating the policy and practices of "ethnic cleansing" in certain parts of the territory;

(b) The practices implementing the policy, particularly in certain parts of Bosnia, have been carried out to a large extent by the most marginal social elements of that society;

(c) The leaders of Bosnian Serbs influenced, encouraged, facilitated and condoned these social elements to carry out the crimes described above. The combination of these factors, stimulated by misguided nationalism, fanned by historical grievances and fuelled by reciprocal violence and revenge, has led to tragic consequences.

142. There is sufficient evidence to conclude that the practices of "ethnic cleansing" were not coincidental, sporadic or carried out by disorganized groups or bands of civilians who could not be controlled by the Bosnian-Serb leadership. Indeed, the patterns of conduct, the manner in which these acts were carried out, the length of time over which they took place and the areas in which they occurred combine to reveal a purpose, systematicity and some planning and coordination from higher authorities. Furthermore, these practices are carried out by persons from all segments of the Serbian population in the areas described: members of the army, militias, special forces, the police and civilians. Lastly, the Commission notes that these unlawful acts are often heralded by the perpetrators as positive, patriotic accomplishments.

143. The above-mentioned factors and others indicate the existence of an element of superior direction. At the very least, they indicate a purposeful failure by superiors to prevent and punish the perpetrators once their crimes become known to the responsible commanders. 40/

144. Lastly, it should be noted that there was initially a link between local activities and activities of Serbs from the Federal Republic of Yugoslavia in Bosnia and Herzegovina and in Krajina, Croatia, and also involvement by JNA. This linkage existed until 2 January 1992, the date of the cease-fire between Serbs in Krajina and JNA and the Federal Republic of Yugoslavia, and is evident in many ways. In fact, these links are not denied by the Federal Republic of Yugoslavia. This is supported by the use of JNA in Croatia and Bosnia and Herzegovina before the conversion of some of these forces into the army of the so-called "Serbian Republic of Bosnia". 41/ Furthermore, there is a strong political, diplomatic and military influence on the part of the Federal Republic of Yugoslavia over a wide range of decisions of the "Bosnian Serb Republic" and the "Serb Republic of Krajina".

145. Similar policies and practices of "ethnic cleansing" have occurred in the Serb-Krajina area and in eastern and western Slavonia in Croatia by Serbs against Croats and also by Croats against Serbs, as discussed below. 42/ The patterns and practices of "ethnic cleansing" described above are the same in separate theatres of operation. This further substantiates the existence of a Serbian policy. One significant instance where this policy was carried out in Croatia is the destruction of the city of Vukovar in 1991. 43/

146. Manifestations of "ethnic cleansing" have occurred throughout the territory of the former Yugoslavia, and similar practices have been committed at certain times and places by Croatian warring factions, as discussed in paragraph 147.

147. "Ethnic cleansing" practices committed by Bosnian Croats with support from the Republic of Croatia against Bosnian Muslims in Herzegovina are politically related. 44/ Furthermore, Croatian forces also engage in these practices against Serbs in the Krajina area and in eastern and western Slavonia. The violence committed against Serbs in these areas appears, however, to have the more defined political aim of removing them from the areas. Croats have used the Croatian Defence Council, police, armed civilians and local special forces to carry out these acts in the areas mentioned above. They have committed grave breaches of the Geneva Conventions, including the destruction of Serbian villages and churches, killing of innocent civilians, torture and forceful removal of the civilian population. In the Krajina area and in eastern and western Slavonia, the cycle of violence between Serbs and Croats started in the early part of 1991, before the war formally began. The violence continued well beyond the end of that war. 45/ Similar practices were also, on occasion, carried out by Croats against Muslims in Bosnia and Herzegovina. 46/ But, the Croatian authorities have publicly deplored these practices and sought to stop them, thereby indicating that it is not part of the Government's policy.

148. Bosnian Government forces have also committed the same type of grave breaches of the Geneva Conventions against Serbs and Croats, but not as part of a policy of "ethnic cleansing". The number of these violations, as reported, is significantly less than the reported violations allegedly committed by the other warring factions.

149. The Commission is unable to determine the amount of harm and the exact number of violations committed by each of the warring factions. Nevertheless,

it is clear that there is no factual basis for arguing that there is a "moral equivalence" between the warring factions.

150. It should be noted in unequivocal terms, however, that reprisals, retribution and revenge do not constitute a valid legal justification or excuse for committing grave breaches of the Geneva Conventions and other violations of international humanitarian law (see paras. 63-66). The Commission emphasizes that in addition to the individual criminal responsibility of perpetrators who commit violations, military and political leaders who participate in the making, execution and carrying out of this policy are also susceptible to charges of genocide and crimes against humanity, in addition to grave breaches of the Geneva Conventions and other violations of international humanitarian law.

IV. SUBSTANTIVE FINDINGS

A. The study of Opština Prijedor, a district in north-western Bosnia: alleged genocide and massive violations of the elementary dictates of humanity 47/

1. General description

151. Opština Prijedor is a district located in north-western Bosnia in an area which is part of the Bosnian Krajina. It is located in between the town of Sanski Most (to the south), the Bosnian-Croatian border towns of Bosanski Novi (to the west) and Bosanska Dubica (to the north), and the regional capital of Banja Luka (to the east). Except for the area of Sanski Most, the other neighbouring districts had Serbian majority populations before the armed conflicts started in Bosnia and Herzegovina.

152. According to the 1991 census, Opština Prijedor had a total population of 112,470 people, of whom 44 per cent were Muslims, 42.5 percent Serbs, 5.6 per cent Croats, 5.7 per cent "Yugoslavs" and 2.2 per cent others (Ukrainians, Russians and Italians). In early April 1992, the total population may have been approximately 120,000 people, augmented, inter alia, by an influx of people who had fled the destruction of their villages in areas to the west of Opština Prijedor.

153. Comparing the 1991 census figures with the results of a population count of June 1993, as published in Serbian-controlled media, gives the following overall picture:

	1991	1993	Reduction	New arrivals
Serbs	47 745	53 637	--	5 892
Muslims	49 454	6 124	43 330	--
Croats	6 300	3 169	3 131	--
Others	8 971	2 621	6 350	--

Thus, the total number of killed and deported persons as of June 1993 is 52,811 (including limited numbers of refugees and people missing). Since then, the

number of non-Serbs in the district have continued to decrease. The extreme persecution to which non-Serbs are subjected and their almost total lack of protection in the district is illustrated by the fact that ICRC and UNHCR asked permission from the Serbs, in March 1994, to evacuate all remaining non-Serbs from Opština Prijedor.

154. The following factual findings of the Commission are based on 300 to 400 statements by surviving victims of the events in Opština Prijedor currently living in different countries, local Serbian media reports of the events and research into the context of the events.

2. Serbs take power on 30 April 1992

155. According to Kozarski Vjesnik, a Serbian-controlled newspaper in Opština Prijedor, of 9 April 1993:

> "The man [Simo Drljača], who the Serbian Democratic Party of the Opština Prijedor put in charge of forming the Serbian police after half a year of illegal work, had done his job so well that in 13 police stations 1,775 well-armed persons were waiting to undertake any difficult duty in the time which was coming. In the night between 29 and 30 April 1992, he directed the takeover of power [by the Serbs], which was successfully achieved in only 30 minutes, without any shots fired. The assembly of the Srpske Opštine Prijedor, at the end of March last year [1992], appointed him Chief of the public security station [i.e., in charge of the secret police]. He was in charge of this job during the most demanding period and remained in the position until January 1993. These days he has been appointed Vice-Minister of Internal Affairs of the Serbian Republic. He will commence his new function in Bijelina on Monday."

156. More than six months prior to the power change in 1992, the Serbs started to build up their own administration parallel to the legitimate authorities in Opština Prijedor - what they called the Serbian Opština Prijedor. This included, inter alia, a pure Serbian police force with secret service functions. The legitimate authorities in Opština Prijedor had been lawfully elected, and the Prijedor Assembly reflected the ethnic composition of the district.

157. In early 1992, a very small Serbian paramilitary group took control of the television transmitter on the Kozara mountain in Opština Prijedor, and as a consequence the population in the district could not receive television programmes from Sarajevo or Zagreb any longer, only from Belgrade and later Banja Luka. The television programmes from Belgrade insinuated that non-Serbs wanted war and threatened the Serbs.

158. Prior to the power change on 30 April 1992, Serbs secretly armed other Serbs in the district. Many soldiers from the Yugoslav People's Army withdrew from Croatia to north-western Bosnia in early 1992. Instead of demobilizing those who returned to Opština Prijedor, the legitimate authorities were pressured to accept redeploying them to control all inroads to and exits from the district together with police and the territorial defence forces (TDFs). The pressure applied was an ultimatum. The legitimate authorities were invited

for a guided sightseeing tour of two Croatian villages just north of Bosanska Gradiška which had been destroyed and left uninhabited. The message was that if the ultimatum was not met, the fate of Prijedor would be the same as that of these villages. The ultimatum was accepted.

3. Immediate consequences of the Serbs taking power

159. An immediate consequence of the Serbian takeover was severed communications between Opština Prijedor and the outside world. It became more difficult to travel and the telephone system was no longer fully operational. A curfew was introduced in Prijedor town - the main town in the district - and travel permits were required in many areas even to move among local villages. Bus services were closed down.

160. In the wake of the power change, most non-Serbs were dismissed from their jobs, be it as police, public officials or even manual workers. In all key functions such as police and local administration, the empty posts were taken over by Serbs.

161. Even before 30 April 1992, Serbs had started to visit the non-Serbs who were licensed to hold weapons and demand that they give their weapons up. This process was intensified after the takeover and combined with a campaign in which non-Serbian police and TDFs were instructed to hand over their weapons and non-Serbian houses and villages were searched for arms.

162. Also, the local media, Radio Prijedor and Kozarski Vjesnik, joined in the anti-non-Serb propaganda. The media slandered former non-Serbian leaders by criticizing everything from their alleged lack of efficiency to their private lives. In addition, the media claimed that dangerous Muslim extremists were in the area, preparing genocide against the Serbs.

4. The major Serbian military operations in the district

163. Following an incident in which less than a handful of Serbian soldiers were shot dead under unclear circumstances, the village of Hambarine was given an ultimatum to hand over a policeman who lived where the shooting had occurred. As it was not met, Hambarine was subjected to several hours of artillery bombardment on 23 May 1992. The shells were fired from the aerodrome Urije just outside Prijedor town. When the bombardment stopped, the village was stormed by infantry, including paramilitary units, which sought out the inhabitants in every home. Hambarine had a population of 2,499 in 1991.

164. On 24 May 1992, a large-scale attack on the entire Kozarac area east of Prijedor town, under the Kozara Mountain, was carried out with intensive bombardment from all directions by artillery, tanks and small firearms. The bombardment lasted for more than 24 hours, before the infantry and paramilitary groups stormed Kozarac and nearby villages and searched for people in every building. The affected area had a total population of almost 27,000 people.

165. On 30 May 1992, a group of less than 150 armed non-Serbs had made their way to the old town in Prijedor to regain control over the town. They were defeated and the old town was razed. In the central parts of Prijedor town, all non-Serbs were forced to leave their houses as Serbian military, paramilitary, police and civilians advanced street by street with tanks and lighter arms. The non-Serbs had been instructed over the radio to hang a white piece of cloth on their homes to signal surrender.

166. Starting on 20 July 1992, a large area of predominantly non-Serbian villages on the left bank of the River Sava (the larger Hambarine/Ljubija area) was attacked in a similar manner to the Kozarac area. However, it was predominantly infantry and paramilitary groups that carried out the destruction. At the time of the attack, the areas had a population of close to 20,000 people, including people who had come for shelter after their villages west of Opština Prijedor had been destroyed.

167. Today the former homes of almost 47,000 people in the Kozarac and Hambarine/Ljubija areas are empty and destroyed. Some were hit by artillery shells, while others were set ablaze in the initial attack. All the homes were later pillaged and a large number blown up, one at a time from inside, destroying especially the inside and the roofs. Most of the artillery used during these attacks had been moved into position some time before the Serbs took power on 30 April 1992.

5. Concentration camps and deportations

168. As non-Serbs were attacked in the villages and Prijedor town, hundreds, possibly thousands, were killed in their home areas, frequently after maltreatment. The survivors that temporarily managed to flee or hide were divided. Females, boys under the age of sixteen (sometimes the age limit may have been lower) and elderly men (older than 60 or 65) made up one group, while the other men comprised the second group.

169. The second group - the men - were taken to hastily opened concentration camps in a ceramic tile factory, Keraterm, next to Prijedor town and on the premises of the iron ore mine and processing plant at Omarska. Massacres, torture and appalling living conditions quickly depleted the number of detainees.

170. In an interview printed in Kozarski Vjesnik on 9 April 1993, Simo Drljača, present Deputy Minister of Interior of the "Serb Republic of Bosnia", stated that:

> "In the collection centres 'Omarska', 'Keraterm' and 'Trnopolje' more than 6,000 informative talks were held. Of this number 1,503 Muslims and Croats were sent to the camp 'Manjača' on the basis of solid documentation of active participation in the fighting against the Army of Republika Srpska ['Serb Republic of Bosnia'], and also participation in genocide against the Serbian people. Instead of letting them get their deserved punishment, the powerful men of the world expressing disdain forced us to release them all from Manjača."

As the "informative talks" or interrogations basically took place in the Omarska and Keraterm camps, it can be concluded that more than 6,000 adult males were taken to these concentration camps in the short period they existed (from the end of May to the beginning of August 1992). Since only 1,503 were moved on to Manjača camp according to Mr. Drljača, a limited number transferred to the Trnopolje camp and almost none released, it may be assumed that the death toll was extremely high. The concentration camp premises were sometimes so packed with people that no more inmates could be crammed in. On at least one occasion this allegedly resulted in an entire busload of newly captured people being arbitrarily executed en masse. Some 37 women were detained in Omarska, while no women were kept over time in Keraterm.

171. The women were normally taken to the Trnopolje camp. In Trnopolje, the regime was far better than in Omarska and Keraterm. None the less, harassment and malnutrition was a problem for all the inmates. Rapes, beatings and other kinds of torture, and even killings, were not rare. Some of these detained women were released after a few days, as there was a lack of space in the Trnopolje camp as well.

172. On their way to the concentration camps, some captives were detained for shorter periods at improvised detention facilities, such as sports halls in schools and stadiums (notably in the Prijedor suburb of Tukovi and in Ljubija).

173. As soon as the Serbs had captured the first groups of non-Serbs, the large-scale deportations of the women started. Some were deported straight from the improvised detention facilities, the majority from the Trnopolje camp. The majority of deportees were cramped into buses or onto military trucks and sent towards Travnik. These deportees had to walk almost 30 km from where the trucks and buses dumped them in a desolate area in the outskirts of the Vlašić Mountain to reach non-Serb held areas in central Bosnia. A few were deported the safer way to Bosanska Gradiška. Sizeable numbers were taken by rail - many in cattle wagons - to Travnik. Some women were let off the trains in Doboj from where they were ushered ahead on foot in the direction of Tuzla. Some individuals perished during the transport owing to the mid-summer heat and to suffocating conditions both in cattle wagons and on closed military trucks, where the deportees were also deprived of food and water.

6. The strategy of destruction

174. The Serbs took power in Opština Prijedor on 30 April 1992, after more than six months of careful planning. After this, the non-Serbs had their homes and communities destroyed and their families split and were deprived of their employment. The majority of non-Serbs were soon captured, thousands incarcerated in concentration camps, and even larger numbers deported. This all happened after the Serbs had sealed off most exits from the area. The non-Serbs represented no real threat to the Serbs under these circumstances, as the district of Prijedor was enclosed at the time by Serbian controlled and dominated areas (the non-Serb majority population in the Sanski Most district was purged simultaneously in Prijedor).

175. Despite the absence of a real non-Serbian threat, the main objective of the concentration camps, especially Omarska but also Keraterm, seems to have been to eliminate the non-Serbian leadership. Political leaders, officials from the courts and administration, academics and other intellectuals, religious leaders, key business people and artists - the backbone of the Muslim and Croatian communities - were removed, apparently with the intention that the removal be permanent. Similarly, law enforcement and military personnel were targeted for destruction. These people also constituted a significant element of the non-Serbian group in that its depletion rendered the group at large defenceless against abuses of any kind. Other important traces of Muslim and Croatian culture and religion, including mosques and Catholic churches, were destroyed.

7. The general lack of protection for non-Serbs

176. From the time when the Serbs took power in the district of Prijedor, non-Serbs, in reality, became outlaws. At times, non-Serbs were instructed to wear white arm bands to identify themselves. Non-Serbs were subjected to crimes without the new Serbian leaders attempting to redress the problem. Rape, for example, became a serious problem for many women who were left alone because their husbands had been detained. The impression was allowed to spread among Serbs that they would be exonerated if they made life difficult for non-Serbs so that the latter would ask permission to leave the district. According to new Serbian regulations, those leaving the district had to sign over their property rights to Serbs and accept never to return, being told that their names would simultaneously be deleted from the census.

8. Responsibility

177. When the Serbs took power in the district of Prijedor, they immediately declared the existence of a Krizni Štab Srpske Opštine Prijedor. Included in the membership of this crisis committee were the military commanders Colonel Vladimir Arsić and Major Radmilo Zeljaja, and other district leaders, such as Major Slobodan Kuruzović; the Chief of Police, Simo Drljaća; Mayor Milomir Stakić; the President of the Executive Board of the Assembly in Prijedor, Mićo Kovačević; the President of the Serbian Democratic Party in Prijedor, Simo Mišković; and the President of the Red Cross in Prijedor, Srdjo Srdić.

178. The military destruction of the non-Serbian habitations in Opština Prijedor took place when the area was under the command of Colonel Vladimir Arsić and Major Radmilo Zeljaja in close cooperation with military superiors, at least in the regional capital Banja Luka. Units stationed outside of Opština Prijedor assisted in the military destruction, as did paramilitary units whose attacks were timed to fit with the artillery attacks and the manoeuvres of the regular army units.

179. In the above-mentioned interview printed in Kozarski Vjesnik on 9 April 1993, Simo Drljača stated:

"[T]hey [the police force, including the secret services] carried out my orders and the orders of the CSB [the Public Security Centre] Banja Luka and the Minister of Interior.

...

"... the cooperation was excellent with the Army of Republika Srpska and with the officers of that army. The cooperation was manifested in the joint cleansing of the terrain of traitors, joint work at the checkpoints, a joint intervention group against disturbances of public order and in fighting terrorist groups."

The secret police and the military police provided the concentration camps with interrogators and guards. For some of the most gruesome torture and killings of detainees, the assistance of paramilitary units and some locals was also called upon. Quasi-military intervention units were used to trace and capture the non-Serbian leadership. The latter units killed prisoners arbitrarily during transport to the Manjača camp and arranged mass-killings of "deported" prisoners in the Vlašić Mountain area.

180. The other members of the crisis committee ran the community in which all these violations occurred. They participated in the administrative decision-making. The gains on different levels of the systematic looting of non-Serbian property were shared by many local Serbs.

181. The Commission of Experts possesses the names of hundreds of alleged perpetrators at different levels and in a variety of capacities.

9. Conclusions

182. It is unquestionable that the events in Opština Prijedor since 30 April 1992 qualify as crimes against humanity. Furthermore, it is likely to be confirmed in court under due process of law that these events constitute genocide.

B. The battle and siege of Sarajevo 48/

183. The battle and siege of Sarajevo began on 5 April 1992, the eve of European Community recognition of Bosnia and Herzegovina as an independent State. On that date, thousands of people took to the streets in spontaneous peace marches. The largest body of demonstrators headed towards the Parliament building and other buildings reportedly seized by Serb forces. Unidentified gunmen were then reported to have fired into the crowd. One protestor was confirmed dead. Since that date, the siege and relentless bombardment from the hills surrounding Sarajevo has taken a tremendous physical toll on the city and its inhabitants.

1. Structure and location of forces in and around the city

184. Since the beginning of the siege, the first Corps Sarajevo has served as the defensive force of the Bosnian Government in and around Sarajevo. Most assessments characterize the first Corps Sarajevo as superior in infantry numbers as compared to the besieging forces, but clearly deficient in firepower. The first Corps Sarajevo headquarters is located at Sarajevo. The Croatian Defence Council and the first Corps forces fought together in defence of the city throughout much of the siege despite opposing one another in Mostar and in other parts of Bosnia and Herzegovina. However, on 10 November 1993, the Croatian Defence Council Brigade was disbanded and part of its personnel joined a new Croatian brigade of the first Corps.

185. The Sarajevo Romanija Corps is the Bosnian-Serb force of the Bosnian-Serbian Army. The Corps has surrounded the city since the beginning of the siege. 49/ It is the successor of the unit of JNA that occupied the same positions until May 1992. The Romanija Corps headquarters are located overlooking the city at Lukavica. The command structure has for the most part remained the same throughout the siege. Three succeeding Generals have commanded that Corp since 1992.

186. Although the Serbian forces surrounding the city have superior firepower, it has been observed that it is unlikely that they could effectively take control of the city. This observation is based, in part, on the fact that the Bosnian forces have more combatants. In addition, controlling the city and its numerous buildings and streets could prove an overwhelming task for the Serb forces. The Serb forces have, therefore, concentrated their efforts on weakening the city through constant bombardment from the surrounding hillsides. A possible explanation for the shifting of firing sites from the mountainous areas surrounding Sarajevo may be that artillery personnel move from one emplacement to the other. Another explanation for this phenomenon could be the pattern of delivery of munitions. There were, however, no apparent munitions shortages.

2. Location and nature of the artillery

187. Many reports in the chronology described shelling as generally coming from artillery, mortars and tanks located in the hills surrounding the city. Some reports described various Serb-held areas and deployment of forces. Reports of the besieging artillery and other heavy-to-medium weapons employed in the siege vary from 600 to 1,100 pieces, but no verified account is available. These estimates do not include tanks. Some of the weapons were in fixed emplacements such as bunkers in the wooded hills and mountains surrounding Sarajevo and its suburbs. On account of the dense foliage, the emplacements were hard to detect from the air, particularly in the summer. Although the bunkers were difficult to see from the roads, the direction from which artillery and heavy mortar shells were fired revealed their emplacement. However, it was difficult to determine whether the bunkers also had snipers with rifles or personnel with small arms.

3. Frequency of shelling

188. UNPROFOR and city officials indicate that the daily shelling of the city ranges from 200 to 300 impacts on a quiet day to 800 to 1,000 shell impacts on an active day. The chronology confirms that the city has been relentlessly shelled. On the days where a total shelling count was documented, Sarajevo was hit by an average of 329 shell impacts per day. The range of shelling activity on these days varied from a low of two impacts on both 17 and 18 May 1993 to a high of 3,777 impacts on 22 July 1993.

4. Systematic shelling of specific targets

189. An examination of the range of destruction in Sarajevo reveals a pattern of specific targeting. The following targets were documented in the chronology as being among the most frequently targeted sites in the city: the Kosevo Hospital; the Sarajevo radio and television stations; the Oslobodenje Newspaper building, which is still in operation; the public transportation system; the Presidency and Parliament buildings; the main city brewery; the flour mill; the main bakery; the Olympic complex; the industrial area of Alipasin Most near the railway station and main television tower; the Jewish cemetery; the Lion Cemetery; the city airport; the tobacco factory; the Dobrinja apartment complex; the central district; Bascarsija (the old quarter of mosques); the Stari Grad Section; New Sarajevo; the main thoroughfare on Marshal Tito Street; and the shopping district at Vase Miskina.

190. The chronology confirms that certain areas of the city have also been systematically shelled throughout the course of the siege, particularly cultural and religious structures and public utilities. The city centre, the airport and southwestern suburbs had consistently been the most often targeted areas. The historic old town area had also been heavily shelled.

5. Patterns of random shelling

191. A review of the incidents in the chronology also indicates a random process of shelling throughout the civilian areas of the city. The shelling, which occurs at different times of the day without any apparent pattern or specific target, has a terror-inspiring effect on the civilian population. It is particularly telling that deaths, injuries and destruction have occurred in various parts of the city and in such well-known non-military settings as schools, open streets, public parks, football and athletic fields, cemeteries, hospitals, and even bread, water and relief lines in the city.

6. Link between shelling activity and political events

192. A review of the incidents in the chronology reveals a pattern of heavy shelling prior to and during the various peace conferences, and other negotiations, suggesting a political link to the attacks. 50/ There are also indications that shell fire has increased or decreased in reaction to statements by local and international political leaders and Governments. 51/

193. On 5 February 1994, at least 68 persons were killed and 200 others were wounded in the shelling of a market in the city centre. In reaction to that attack, NATO issued an ultimatum on 9 February which gave Bosnian Serb and Bosnian forces 10 days, starting on 11 February, to withdraw their heavy weapons from a designated exclusion zone or face heavy airstrikes. Very little progress was made with regard to the ultimatum until 17 February, when the Russian Federation announced that it was sending a contingent of 400 troops to the city, and persuaded Bosnian Serb forces to comply with the NATO ultimatum. On 20 February, NATO announced that there had been virtual compliance with the ultimatum and that there was no need for airstrikes "at this stage". Since that date, artillery fire has substantially decreased in Sarajevo.

194. The cumulative effect of the number of civilian casualties, the destruction of non-military structures, attacks upon and destruction of protected targets, such as hospitals, cultural property and other impermissible targets, evidence a consistent and repeated pattern of grave breaches of the Geneva Conventions and other violations of international humanitarian law. The length of time over which these violations took place and their recurrence clearly establish that, in at least a large number of incidents, those ordering and carrying out these actions committed such violations. Command responsibility also clearly exists.

C. Sarajevo investigation 52/

195. From 20 June to 9 July 1993, the Commission sent an investigative mission to Sarajevo, then under siege, to undertake a law-of-war study of a specific incident in the battle of Sarajevo and an analytical law-of-war survey of the battle of Sarajevo. The mission included a group of Canadian military lawyers and police investigators.

196. The mission participants met with a wide range of local officials, including the Bosnian State War Crimes Commission, city officials, medical officials and military officers.

197. The objective of the incident study was to analyse in depth a specific incident which occurred during the siege of Sarajevo, to identify specific violations of the law of war (particularly violations in which civilian casualties have occurred) to analyse the circumstances of the incident and to assess the feasibility of identifying and prosecuting alleged offenders (particularly the military commanders). The report is based on information that could be obtained in and around Sarajevo.

198. No incident was chosen prior to arrival in Sarajevo. Criteria to be considered in selecting an incident included: number of casualties, number of projectiles fired, sources and, to a lesser extent, time elapsed since the incident. It was hoped that it would be possible to get information from Bosnian, UNPROFOR and Serbian sources. The rationale for preferring an incident in which more than one projectile was fired was that multiple projectiles would give a stronger indication of intent to commit an offence.

199. Bosnian State War Crimes Commission authorities were requested to provide evidence concerning six incidents of their choice, on the understanding that

those incidents would be considered, but not necessarily chosen, for in-depth investigation. The evidence could not be compiled by the Commission within a short period of time and, as a result, an alternative approach was decided upon. Bosnian authorities suggested six incidents about which they believed a reasonable amount of information would be available. Two of these incidents, the shelling of a soccer game on 1 June 1993 and the shelling of a funeral in mid-June 1993, were selected for the possible in-depth investigation. Preliminary investigation indicated information on the shelling of the funeral would only be available from one source, as heavy rains the day after had washed away the evidence which UNPROFOR had intended to gather.

200. The incident finally selected for in-depth investigation was the mortar shelling of a soccer game in the Dobrinja suburb of Sarajevo on 1 June 1993. The investigators interviewed several witnesses on the Bosnian side, and also reviewed the crater analysis produced by UNPROFOR. Investigators were unable to interview witnesses on the Serbian side.

201. On the basis of the investigation it is reasonable to conclude that:

(a) Two mortar shells landed at the soccer tournament at approximately 10.30 a.m. on 1 June 1993;

(b) Thirteen persons were killed and 133 injured by the shells;

(c) The shells were fired from the Serbian side, approximately 300 m south of Lukavica barracks;

(d) The weather was clear and sunny with good visibility;

(e) The area where the shelling occurred was exclusively residential;

(f) The game site could not be seen from the Serbian side because it was surrounded by apartment buildings, but the cheering could be heard at the front line;

(g) No projectiles had landed in the area for several months.

202. On the basis of the above factors, it is reasonable to conclude that a prima facie case exists that persons on the Serbian side deliberately attacked civilians and, therefore, committed a war crime. With the information available, it is not possible to identify the probable offenders at present.

203. In connection with the analytical law-of-war survey and of the battle of Sarajevo, the study team visited several incident sites in Sarajevo. The shelling and sniping precluded an in-depth survey of property damage. The team, however, met with a wide range of officials of the Bosnian Government and UNPROFOR officers and obtained documentary material from them. The team was unable to meet with Serbian officials in Pale, even though it attempted to do so.

204. The report prepared by the investigation team is a non-exhaustive survey of law of armed conflict issues arising during the siege of Sarajevo. The team did

not have an opportunity to visit the Bosnian Serb Army forces during the investigation and received no allegations of Bosnian Government misconduct during the siege except for allegations from UNPROFOR sources concerning positioning of and firing by Bosnian Government forces. The report focuses on combat-related offences, unlawful targeting and the use of unlawful means and methods of warfare. It concluded that it is unlikely that weapons that are illegal per se were used during the siege, or that there was unauthorized use by personnel of the Bosnian Serb Army of vehicles carrying United Nations markings - which could be viewed as perfidious conduct. If persons were killed or wounded as a result of perfidious action, a grave breach of Protocol I would be established. Somewhat similarly, it would have to be established that named individuals attacked or authorized attacks on United Nations forces for these persons to be charged with violating the laws or customs of war, as set out in article 3 of the statute of the International Tribunal, in that they would be committing a grave breach of article 85, paragraph 3 (a), of Protocol I by making the civilian population or individual civilians the object of attack. In the Sarajevo context, United Nations peace-keepers are non-combatants and entitled to be treated as civilians. The tendency of both sides to control food, water and electricity for publicity purposes, the intermingling of military forces and the civilian population and the fact that no one appears to have died during the siege from starvation, dehydration or freezing, combine to make difficult the establishment of a solid case that starvation is being used as a method of warfare. The conduct of this matter has been deplorable, but its criminality is debatable.

205. Most of the war crimes committed in Sarajevo have involved attacks on civilian persons and objects and destruction of cultural property. An accurate list of persons killed and seriously injured during the siege of Sarajevo needs to be established. It will also have to be determined if, at the time of death, they were combatants or non-combatants and when, where and how they were killed or injured. Once this information is available, it will be possible to distinguish military and civilian casualties. It may also be possible to determine where the projectiles causing casualties came from in such a way that one can establish that they were caused by a particular unit. It will also be possible to determine how many of the civilian casualties were caused by some form of sniper fire. Irrespective of the rule of proportionality, it is reasonable to presume that civilian casualties caused by sniper fire are the result of deliberate attacks on civilians and not the result of indiscriminate attacks, as may be the case in shelling.

206. The compilation of a chronological and quantitative survey of damage to civilian objects in Sarajevo was not attempted by the study team. 53/ Its preliminary observations follow. It is obvious that damage has been caused to certain religious, cultural and medical buildings. There is a strong possibility that there has been a deliberate attempt to target certain types of objects. For example, a detailed study of the shelling of the Kosevo medical facility or of the National Library would probably indicate these objects had been deliberately targeted. There is also a strong possibility that a deliberate effort has been made to target religious facilities. The concealment of Bosnian Government forces among civilian property may have caused the attraction of fire from the Bosnian Serb Army which may have resulted in legitimate collateral damage. There is enough apparent damage to civilian

objects in Sarajevo to conclude that either civilian objects have been deliberately targeted or they have been indiscriminately attacked.

207. There have been incidents in the past where substantial civilian casualties have been caused and substantial military advantage gained by a particular military action. In those cases, one might attempt to quantify both military advantage and civilian losses and apply the somewhat subjective rule of proportionality. As a general statement, however, the rule of proportionality is not relevant to the sniping activities of the Bosnian Serb Army forces, and it is of questionable relevance to many of the artillery bombardments. The Bosnian Serb Army forces are deliberately targeting the civilian population of Sarajevo, either as a measure of retaliation or to weaken their political resolve. Attacking the civilian population is a war crime.

208. It will probably be very difficult to link particular individuals to specific incidents in which civilians or civilian objects have been deliberately attacked or subjected to indiscriminate attacks. However, it may be less difficult to identify specific units. It may be possible to localize incidents in such a way that it is clear that a certain unit under a particular commander was the cause of a number of incidents. Whether or not it is possible to develop a firm case against individual soldiers or unit commanding officers, it should be quite practicable to develop a prima facie case against the officer or officers responsible for the Bosnian Serb Army forces that have been surrounding Sarajevo from the beginning of the siege.

209. It is the view of the Commission that:

(a) The study of a specific incident in the battle of Sarajevo established with a reasonable degree of certainty that the civilian population had been deliberately targeted, but it was not practicable to identify the perpetrators;

(b) The general study on the law of armed conflict and the battle of Sarajevo assessed a range of information sources and, relying on the doctrine of command responsibility, provided support for the suggestion that it would be possible to develop a prima facie case against the commander of the Bosnian-Serb forces surrounding Sarajevo for deliberately attacking the civilian population (see annex VI.A).

D. Medak Pocket investigation 54/

210. On 9 September 1993, Croat forces attacked the Medak Pocket, a collection of small rural villages and hamlets forming a finger of Serb-controlled land in Sector South jutting into Croat territory. The Croats quickly killed or routed the few Serb defenders and overran the area. Within several days, however, Croatian authorities indicated a willingness to withdraw to their 8 September positions and to turn over the vacated territory to UNPROFOR. The withdrawal was completed by 17 September. As United Nations forces entered the Pocket, they found every building burning or demolished. There were hundreds of such buildings in the several villages and hamlets. None were habitable. Special sweep teams assessed and recorded damage, searched for survivors and collected bodies. The teams included UNPROFOR medical officers, civil police (CIVPOL)

monitors and soldiers. Very substantial reports were prepared on the Medak Pocket incident by UNPROFOR. To some extent, these reports duplicated one another but, considered together, they provided an excellent basis for a subsequent investigation focusing on legal and forensic issues.

211. The Commission sent a team consisting of Canadian military personnel and a forensic expert from Physicians for Human Rights to visit the area and the destroyed villages from 27 to 31 October 1993, and to review reports and photographs provided by UNPROFOR and "Serb Republic of Krajina" authorities.

212. Their investigations concluded that, although some of the dead probably were murdered, no individual could at the time be identified to be directly responsible. Furthermore, there was no strong unambiguous pattern of criminal killing sufficient at the time to affix responsibility upon the Croat commanders for deliberate killing of civilians.

213. At the same time, this investigation resulted in the following findings concerning wanton destruction:

(a) Unlike the evidence concerning the deaths arising from the Medak Pocket operation, there was a clear, obvious and overwhelming pattern of wanton destruction. Hundreds of homes were destroyed; hundreds of other buildings were destroyed; most animals were killed or taken; virtually all personal property was destroyed or taken; all vehicles and farm equipment were destroyed or taken; haystacks were set on fire; and many wells were polluted. Devastation was total;

(b) The timing of the destruction was inconsistent with any legitimate military conduct and not of military necessity. The bulk of this destruction occurred on 16 September, according to the many eyewitnesses. The sounds of the explosions, the rising of the smoke from fires and the fact that many buildings were still on fire as United Nations personnel entered the Pocket establish this;

(c) The destruction occurred well after all Serb resistance had ended. There was no Serb resistance in the areas from which the explosions were heard and the rising smoke seen. All effective Serb forces had fled the area at the time of the bulk of the destruction. The devastation was wrought in an unopposed withdrawal, not a contested advance or retreat. Even the Croatian liaison officer was forced to use an excuse not involving legitimate combat activity by the opposing forces. The scattered nature of the buildings, with the brief and desultory original Serb defence, does not explain this level of destruction;

(d) The widespread destruction by demolition and fire is also generally inconsistent with legitimate military operations. If buildings are contested, then demolition charges cannot usually be placed inside them. There was no other evidence to show how these buildings were destroyed other than by enemy forces being present in them;

(e) Various contradictory excuses given by the Croats for the destruction suggest the lack of any legitimate excuse for such widespread destruction.

214. It is the view of the Commission that the Medak Pocket investigation report provides exceptionally strong support for the suggestion that prima facie cases can be developed against named Croatian senior officers for the wanton destruction of civilian property.

215. The report prepared for the Commission and contained in annex VII as a result of the investigation includes suggestions for draft charges, synopses of evidence and trial plans for the possible prosecution of named Croatian senior officers.

E. Detention facilities 55/

216. Since the spring of 1992, the warring factions to the conflicts in the former Yugoslavia operated a variety of detention facilities (camps) throughout the former Yugoslavia.

217. The Commission received information concerning a total of 715 camps, most of which are now closed. The Commission's information about the exact date of opening and closing of these camps and the number of prisoners is incomplete. 56/

218. Of the 715 camps: 237 were operated by Bosnian Serbs and the former Republic of Yugoslavia; 89 were operated by the Government and army of Bosnia and Herzegovina; 77 were operated by Bosnian Croats, the Government of Croatia, the Croatian Army and the Croatian Defence Council; 4 were operated jointly by the Bosnian Government and Bosnian Croats; and 308 camps for which it is not known with certainty under whose effective control they were.

219. The camps range in size from small detention centres that temporarily house a few prisoners to camps that house large numbers of prisoners. The duration of their operation varies from days to months. The purposes of the camps vary as well.

220. Owing to the nature of the several conflicts and the military structure of the warring factions (see paras. 110-128 and annex III), the control of camps varies. At different points in time, the same camp may be controlled by the army, the central Government, local and political authorities, the police, various military groups and local armed civilians.

221. The various groups identified above converted pre-existing structures, such as municipal buildings, administrative offices, schools, sports arenas within the occupied areas and larger facilities on the outskirts of those areas (factories, warehouses, quarries and mines), into camps. Using these pre-existing facilities allows for quick and easy control and displacement of the targeted population of a controlled or conquered geographic region by one of the warring factions. There is no particular distinction between facilities holding prisoners of war and non-combatant civilians.

222. The camps are frequently used to detain the civilian population that has been forcibly displaced from particular regions. Detention either precedes or follows armed engagements in these regions. Wholesale detention of persons from

another ethnic or religious group occurs even when there is nothing to suggest that internment of civilians is necessary for any valid legal purpose (see paras. 129-150 and annex III).

223. Camps are frequently the reported sites of mass executions, torture, rapes and other forms of sexual assault. They are the scene of the worst inhumane acts. These inhumane acts are committed by guards, police, special forces, and others who are allowed to come from the outside to perform such acts.

224. As the following discussion indicates, the number of camps and the number of reported violations in camps controlled by the Government of Bosnia and Herzegovina and its army are by far the lesser of the warring factions, irrespective of the ethnic or religious background of the detainees they hold. The number of reported violations by the Croatian Government, the Croatian Army and the Croatian Defence Council is larger, particularly against Serbs in Krajina and in eastern and western Slavonia and against Muslims from Bosnia and Herzegovina in Herzegovina. The period of time during which those camps were operated in each of these contexts is relatively limited. The two warring factions identified above are however reported to have a much lesser number of violations than those committed by the Serb forces and those working on their behalf, whether in Croatia or Bosnia and Herzegovina. Camps operated by Serbs in Bosnia and Herzegovina are by far the ones where the largest numbers of detainees have been held and where the cruellest and largest number of violations occurred.

225. The characteristics and patterns of violation in the camps differ widely depending on the controlling authority, the purpose of the camp and the camp commander.

226. Following is a summary description of camps divided by warring factions in control. 57/

1. Bosnian Government camps

227. Bosnian Government camps are reported to have been the site of cases of grave breaches of the Geneva Conventions. These allegations include killing and torture of Croatian and Serbian prisoners. The number of reports and allegations are, however, limited. The Commission has not been able to detect any particular pattern or policy of wrongdoing. The Commission has, however, ascertainod that the Government of Bosnia and Herzegovina has expressed its opposition to these individual violations.

2. Bosnian-Croat, Croatian Defence Council, Croatian Government and Croatian Army camps

228. The Bosnian-Croat and Croatian Defence Council camps were in Herzegovina. The Croatian Government and Croatian Army operated camps were in the Krajina area, in eastern and western Slavonia and in other parts of Croatia. Grave breaches of the Geneva Conventions have occurred in these facilities against Serbs and Bosnian Muslims, including killing, torture and rape. The Commission

has not been able to detect any particular pattern or policy in operating these camps. The Commission has information concerning the location and some information about the physical layout and command structure of some of these camps. The Commission also has information concerning the killings and torture inflicted on the interned population, as well as the names of some perpetrators and victims. The largest number of violations reported are in the Krajina and eastern and western Slavonia against Serbs and in Herzegovina by Bosnian Croats and the Croatian Defence Council against Bosnian Muslims. The Government of Croatia has, since late 1993, according to information received by the Commission, condemned these violations and sought to curb their occurrences.

3. "Bosnian Serb Republic" camps

229. The Commission has information that Bosnian Serbs are operating camps where grave breaches of the Geneva Conventions and other violations of international humanitarian law, including killing, torture and rape reportedly occur on a large scale. These camps are mostly in Bosnia and Herzegovina and hold Bosnian Muslims for the most part, but also Bosnian Croats. The Bosnian Serbs use camps to facilitate territorial and political control of a geographic region and to expel and eliminate other ethnic and religious populations from that area. The Commission has detailed information concerning some of the locations and physical layouts of some of these camps, including descriptions of the various buildings where prisoners are detained, interrogated, tortured and killed. The Commission also has information about some camp commanders and military units in the areas and individual violators.

230. The following patterns have reportedly emerged from these camps:

(a) Camps are ultimately intended to achieve "ethnic cleansing" (see paras. 129-150 and 151-182 and annex V);

(b) Groups of camps are established and operated in clusters in various geographical areas and are frequently part of a network. Prisoners are frequently moved from one facility to another. Different facilities often have separate specific purposes like mass killing, torture, rape and exchange and holding of civilian prisoners;

(c) Detainees are sometimes transported from camps within a given region to camps in another region because of overcrowding, anticipated ICRC inspection, visits by the media, exchange of prisoners and as a result of triage for unlawful purposes;

(d) Purposeful humiliation and degradation of prisoners is a common feature in almost all camps;

(e) After a village, town or city is conquered, the local population is rounded up en masse and interned in different locations. During the rounding-up process, members of the population are frequently tortured, raped and killed. Local religious, political, civic, professional, business leaders and prominent personalities are singled out for the worst abuses. On the captors' side, local

civil servants, political leaders and particularly the police participate or are involved in the rounding-up process;

(f) Prisoners are forced to surrender their money and valuables to their captors and, if released, these valuables are not returned;

(g) In most instances, captors interrogate prisoners for information about military and strategic information, political affiliation and political belief. Captors also interrogate detainees concerning the personal wealth and family connections of other detainees. Most of the time, the questioning is unrelated to military or security matters. Almost always, interrogation is accompanied by brutality and humiliation and, in many cases, by torture and murder;

(h) The smaller camps house the population temporarily until the captors divide the prisoners into smaller groups and transport them to larger camps or to separate sections of large camps. When prisoners are transported to larger camps, they are often packed tightly into buses, lorries or freight and cattle trains and are subjected to physical and mental abuse. While being transported, prisoners are often killed at random and are denied food, water and access to toilet facilities. When the buses or freight cars reach their destinations, while the prisoners are unloaded, several prisoners are often killed. Sometimes prisoners are transported by car to camps by locals;

(i) Men between the ages of 16 (or younger) and 60, who are considered to be of military age, are usually separated from older men, women and children. These men are transferred to heavily guarded larger camps where killings and brutal torture are prevalent;

(j) At the larger camps, prisoners are subjected to random beatings. Many prisoners are beaten under the guise of being interrogated. Beatings, more severe torture and killings escalate when there has been a Bosnian-Serb military setback and when there are Serb casualties;

(k) Prisoners who are targeted for torture or death at the larger camps include prominent members of the community who are wealthy, educated or politically influential persons in the community. Guards usually have information identifying which prisoners fall into these categories. They obtain that information from their own local population, through coercion and violence from other prisoners or from other detention facilities that are used solely to interrogate displaced populations;

(l) In several instances, prisoners have been forced to inflict injury on each other, sometimes as entertainment for the guards. In other instances, prisoners are mass executed by machine-gun fire;

(m) In most camps (particularly during the second half of 1992 and the first half of 1993), prisoners are killed on a daily basis. Their bodies are sometimes left to rot on camp grounds, disposed of in mass graves abutting the camps and thrown into rivers, ravines, mine shafts and mining pits. The Commission has some information concerning the locations of many of these mass graves (see paras. 253-263 and annexes X, X.A and X.B);

(n) Women, children and men over 60 years of age are usually separated from others and taken to separate camps. These camps are guarded and surrounded by fences, but prisoners are usually allowed to walk from building to building within the camp compound. Although fewer killings occur at these camps, torture and particularly rape are commonplace;

(o) Rape is prevalent in the camps (see paras. 231-252 and annexes IX and IX.A). Captors have killed women who resisted being raped, often in front of other prisoners. Rapes were also committed in the presence of other prisoners. Women are frequently selected at random during the night. These rapes are done in a way that instills terror in the women prisoner population. The Commission has information indicating that girls as young as 7 years old and women as old as 65 have been raped while in captivity. 58/ The group most targeted for rape, however, is young women between the ages of 13 and 35. Mothers of young children are often raped in front of their children and are threatened with the death of their children if they do not submit to being raped. Sometimes young women are separated from older women and taken to separate camps where they are raped several times a day, for many days, often by more than one man. Many of these women disappear, or after they have been raped and brutalized to the point where they are traumatized, they are returned to the camps and are replaced by other young women. There have also been instances of sexual abuse of men as well as castration and mutilation of male sexual organs;

(p) Prisoners in all camps are subjected to mental abuse and humiliation, including barrages of ethnic slurs. Prisoners are detained in unsanitary environments where dysentery and lice epidemics are rampant. Prisoners are often denied the use of toilet facilities. Often, male prisoners of fighting age are packed so tightly in the prison facilities that they do not have room to lie down or sit, or sometimes even to breathe. In addition, prisoners are nearly starved to death and, at best, are given one meal a day consisting of meagre portions of thin soup and bread. In instances where food is delivered to a camp by the ICRC, the food is not distributed to prisoners as intended. Instead, food is retained for the Bosnian-Serb fighting forces or is consumed by the camp guards. Furthermore, medical attention is, for the most part, non-existent at the camps, and often sick and wounded prisoners are buried alive in mass graves along with the corpses of killed prisoners.

231. The Commission concludes that grave breaches of the Geneva Conventions and other violations of international humanitarian law have been committed over a long period of time, on a large scale, and very frequently in the most brutal, inhuman and degrading manner. These violations are ordered by or known to the camp commanders, the local political leadership and police. Army units may or may not be involved. However, they do not intervene to stop these violations, thereby implying responsibility by omission.

F. Rape and other forms of sexual assault 59/

232. Throughout the various phases of the armed conflicts in the former Yugoslavia, there have been numerous reports of widespread and systematic rape and other forms of sexual assault. The Commission, concerned about these

reported crimes, undertook several means of research and investigation to ascertain the facts.

233. The Commission sought particularly to examine the relationship between "ethnic cleansing" and rape and other forms of sexual assault.

234. Owing to the social stigma attached - even in times of peace - rape is among the least reported crimes. For this reason, it is very difficult to make any general assessment of actual numbers of rape victims. In the former Yugoslavia, there appears to have been very little, if any, difference between the ethnic groups in the reluctance to report rape. The overall reluctance to report rape is aggravated by war, especially if the perpetrators are soldiers and also where there is a general condition of chaos and a breakdown in law and order. The victims may have little confidence in finding justice. The strong fear of reprisal during wartime adds to the silencing of victims. 60/ The perpetrators have a strong belief that they can get away with their crimes.

235. Men are also subject to sexual assault. They are forced to rape women and to perform sex acts on guards or each other. They have also been subjected to castration, circumcision or other sexual mutilation.

1. Rape and sexual assaults study: the Commission's database 61/

236. The reports contained in the Commission's database identify close to 800 victims by name or number. 62/ An additional 1,673 victims are referred to, but not named in reports of victims who indicate that they have witnessed or know of other similar victims. Additionally, there are some 500 reported cases which refer to an unspecified number of victims. The victims' ages, as reported, range from 5 to 81 years old, with the majority of victims below 35 years old. The reported cases identify some 600 alleged perpetrators by name. In other cases, victims refer to a specific number of perpetrators, but do not identify them by name. In those cases of unidentified perpetrators, about 900 perpetrators are referred to. Of all the reports received, about 800 contain general information, identifying some perpetrators as soldiers, police, paramilitary, special forces, etc. The alleged perpetrators include military personnel, special forces, local police and civilians. About 80 per cent of the reported cases specify that they occurred in settings where the victims were held in custody.

237. The reported cases of rape and sexual assault contained in the database occurred between the fall of 1991 and the end of 1993. The majority of the rapes occurred from April to November 1992; fewer occurred in the following five months. In the same time period, the number of media reports increased from a few in March 1992 to a high of 535 news stories in January 1993 and 529 in February 1993. This correlation could indicate that the media attention caused the decline. In that case, it would indicate that commanders could control the alleged perpetrators if they wanted to. 63/ This could lead to the conclusion that there was an overriding policy advocating the use of rape as a method of "ethnic cleansing", rather than a policy of omission, tolerating the widespread commission of rape.

2. Pilot study on rape

238. From 29 June to 9 July 1993, the Commission sent an investigative mission, consisting of Canadian military personnel, to Sarajevo to undertake a pilot study on the rape issue. 64/ The objective was to review available information and to develop a methodology for interviewing witnesses and victims in order to determine how relevant evidence could be obtained for use before a tribunal.

239. In Sarajevo, the investigative team obtained all the relevant information from the database of the War Crimes Commission of Bosnia and Herzegovina. The database lists 126 victims, 113 incidents, 252 alleged perpetrators, 73 witnesses and 100 documents. Of these, there were 105 rape cases.

240. It is the view of the Commission of Experts that the pilot study of the rape issue was relatively generalized. Although the pilot study assessed various information sources, it was not practicable to gather precise information leading to possible prima facie cases.

3. Rape and other forms of sexual assault: interviewing victims and witnesses

241. A series of interviews was carried out by the Commission in Croatia and Slovenia in March 1994. 65/ Among the 146 victim-witnesses from Bosnia and Herzegovina who were interviewed, 31 were women victims of rape, and two were suspected by the interviewer to have been victims themselves but were unwilling to speak of their own experience. One of the men from Bosnia and Herzegovina interviewed was a victim of sexual assault. This occurred in a detention facility. Among the women, 18 66/ were raped in their own homes, while 13 had been raped while in detention. Among the other men and women interviewed, there were 21 witnesses to additional cases of rape or sexual assaults. 67/ This involves a total number of 55 persons who were either the victims of or witnesses to rape or sexual assault.

242. Among the 77 victim-witnesses from Croatia who were interviewed, 11 were women victims of rape. Six of the men from Croatia who were interviewed were victims of sexual assault. In the case of the men, all but one of these violations occurred in a detention context. However, seven of the women had been raped in their own homes. These women were victims of multiple and/or gang rapes involving up to eight soldiers. Four women were raped while in detention, among them was a woman who was detained in her own home for six months and raped almost daily. Among the other men and women interviewed from Croatia, nine were witnesses to additional cases of rape or sexual assault. This involves a total number of 27 persons who were either the victims of or witnesses to rape or sexual assault.

243. All of the information gathered through the 223 interviews, 68/ that were conducted by the Commission has been made available to the Prosecutor of the International Tribunal. There has been insufficient time between the end of the interview process (31 March 1994) and the finalization of the present report (30 April 1994) for a detailed analysis of the cases to be conducted by the Commission. 69/ However, the information gathered seems to support the analysis

carried out on the basis of the allegations included in the Commission's database. In the following paragraphs, the patterns of rape and sexual assault identified through the database are outlined, while illustrations are given which are drawn from among the interviews.

244. Five patterns 70/ emerge from the reported cases, regardless of the ethnicity of the perpetrators or the victims (see also para. 229 for a description of rape practices in custodial settings).

245. The first pattern involves individuals or small groups committing sexual assault in conjunction with looting and intimidation of the target ethnic group. This is before any widespread or generalized fighting breaks out in the region. Tensions in an area grow and members of the ethnic group controlling the regional government begin to terrorize their neighbours. Two or more men break into a house, intimidate the residents, steal their property, beat them and often rape the females. Some of the reported rapes are singular and some multiple. In either case, there is often a gang atmosphere where the abuses are part of the same event and all the attackers participate, even if they do not sexually assault the victims. One of the women interviewed was gang-raped by eight soldiers in front of her six-year-old sister and her five-month-old daughter. One of the men was forced at gunpoint to rape the victim, "as she was an Ustasha". When she reported the crimes to local authorities, they said they could do nothing as "she was a Croat".

246. The second pattern of rape involves individuals or small groups committing sexual assaults in conjunction with fighting in an area, often including the rape of women in public. When forces attack a town or village, the population is rounded up and divided by sex and age. Some women are raped in their homes as the attacking forces secure the area. Others are selected after the roundup and raped publicly. The population of the village is then transported to camps. One victim-witness interviewed saw an elderly woman and others raped in front of a group of 100 detained villagers. The witness was herself threatened with rape and she saw a number of men from the group having their throats cut.

247. The third pattern of rape involves individuals or groups sexually assaulting people in detention because they have access to the people. Once the population of a town or village has been rounded up, men are either executed or sent off to camps, while women are generally sent off to separate camps. Soldiers, camp guards, paramilitaries and even civilians may be allowed to enter the camp, pick out women, take them away, rape them and then either kill them or return them to the site. Reports frequently refer to gang rape, while beatings and torture accompany most of the reported rapes. Survivors report that some women are taken out alone, and some are taken out in groups. Though this is the general pattern, there are also many allegations that women are raped in front of other internees, or that other internees are forced to sexually abuse each other. In camps where men are detained, they are also subjected to sexual abuse. During the Commission's interviewing process 15 people were interviewed whose major allegations related to the same detention camp. Some witnesses were men, and all of the women victims had been raped. The women were sometimes gang raped by, or in the presence of, the camp commander. Guards from the external ring of security around the camp (who apparently did not enter the camp in the course of their work) and soldiers who were strangers to the camp would be

allowed access to the camp for rape. One of the victim-witnesses interviewed saw a woman die after being in a coma for a week as a result of about 100 sadistic rapes by guards. Sexual assaults were also practised against men: one witness saw prisoners forced to bite another prisoner's genitals. In addition, 10 of those interviewed had witnessed deaths by torture and seven of the group had survived or witnessed mass executions (there or in other camps). Another incident related in an interview involved prisoners lined up naked while Serb women from outside undressed in front of the male prisoners. If any prisoner had an erection, his penis was cut off. The witness saw a named Serb woman thus castrate a prisoner. Another ex-detainee told of suffering electric shocks to the scrotum and of seeing a father and son who shared his cell forced by guards to perform sex acts with each other.

248. The fourth pattern of rape involves individuals or groups committing sexual assaults against women for the purpose of terrorizing and humiliating them often as part of the policy of "ethnic cleansing". Survivors of some camps report that they believe they were detained for the purpose of rape. In those camps, all of the women are raped quite frequently, often in front of other internees, and usually accompanied by beatings and torture. Some captors also state that they are trying to impregnate the women. Pregnant women are detained until it is too late for them to obtain an abortion. One woman was detained by her neighbour (who was a soldier) near her village for six months. She was raped almost daily by three or four soldiers. She was told that she would give birth to a chetnik boy who would kill Muslims when he grew up. They repeatedly said their President had ordered them to do this. One woman's home was taken by Serbian neighbours and used as a detention centre for interrogations over several months. She was raped almost daily and beaten for several months; two other women were raped there too. She saw several killings and torture.

249. The fifth pattern of rape involves detention of women in hotels or similar facilities for the sole purpose of sexually entertaining soldiers, rather than causing a reaction in the women. These women are reportedly more often killed than exchanged, unlike women in other camps. One woman interviewed was detained in a private house with a number of other women for six months. The women were of mixed ethnicity. All the women were raped when soldiers returned from the front line every 15 days. The witness was told that the women had to do this because the women in another camp (which the witness named and which has been documented by other information gatherers) were exhausted.

250. Common threads run through the cases reported whether within or outside of a detention context:

(a) Rapes seem to occur in conjunction with efforts to displace the targeted ethnic group from the region. This may involve heightened shame and humiliation by raping victims in front of adult and minor family members, in front of other detainees or in public places, or by forcing family members to rape each other. Young women and virgins are targeted for rape, along with prominent members of the community and educated women;

(b) Many reports state that perpetrators said they were ordered to rape, or that the aim was to ensure that the victims and their families would never want to return to the area. Perpetrators tell female victims that they will

bear children of the perpetrator's ethnicity, that they must become pregnant, and then hold them in custody until it is too late for the victims to get an abortion. Victims are threatened that if they ever tell anyone, or anyone discovers what has happened, the perpetrators will hunt them down and kill them;

(c) Large groups of perpetrators subject victims to multiple rapes and sexual assault. In detention, perpetrators go through the detention centres with flashlights at night selecting women and return them the next morning, while camp commanders often know about, and sometimes participate in, the sexual assaults;

(d) Victims may be sexually abused with foreign objects like broken glass bottles, guns and truncheons. Castrations are performed through crude means such as forcing other internees to bite off a prisoner's testicles.

251. Rape has been reported to have been committed by all sides to the conflict. However, the largest number of reported victims have been Bosnian Muslims, and the largest number of alleged perpetrators have been Bosnian Serbs. There are few reports of rape and sexual assault between members of the same ethnic group.

252. In Bosnia, some of the reported rape and sexual assault cases committed by Serbs, mostly against Muslims, are clearly the result of individual or small group conduct without evidence of command direction or an overall policy. However, many more seem to be a part of an overall pattern whose characteristics include: similarities among practices in non-contiguous geographic areas; simultaneous commission of other international humanitarian law violations; simultaneous military activity; simultaneous activity to displace civilian populations; common elements in the commission of rape, maximizing shame and humiliation to not only the victim, but also the victim's community; and the timing of rapes. One factor in particular that leads to this conclusion is the large number of rapes which occurred in places of detention. 71/ These rapes in detention do not appear to be random, and they indicate at least a policy of encouraging rape supported by the deliberate failure of camp commanders and local authorities to exercise command and control over the personnel under their authority.

253. These patterns strongly suggest that a systematic rape policy existed in certain areas, but it remains to be proven whether such an overall policy existed which was to apply to all non-Serbs. It is clear that some level of organization and group activity was required to carry out many of the alleged rapes. Furthermore, rape and sexual assault should be examined in the context of the practice of "ethnic cleansing", which is discussed in paragraphs 129 to 150 and the practices in detention camps discussed in paragraph 230. When viewed in these contexts, it is clear that grave breaches of the Geneva Conventions occurred, as did other violations of international humanitarian law. 72/

G. Mass graves 73/

254. Owing to the large scale of victimization that has taken place over a substantial portion of the territories of Croatia and Bosnia and Herzegovina since 1991, there is a significant number of persons who have been buried in many individual and mass graves.

255. The Commission addressed the question of mass graves in its second interim report of 6 October 1993 (S/26545, annex) and outlined its plans for the continuation of the database study and the exhumation at Ovčara (Sector East Croatia) (see paras. 265-276) and Packračka Poljana (Sector West Croatia) (see paras. 277-284).

256. As of 31 March 1994, the Commission received information leading to the identification of 187 mass grave sites throughout the territory of the former Yugoslavia. 74/ Of the reported sites, 143 are located in Bosnia and Herzegovina and 44 are in Croatia.

257. The number of bodies in reported mass graves ranges from 3 persons to 5,000 persons. Of the mass grave sites, 65 are believed to contain at least some Muslims; 32 are believed to contain at least some Croats; and 19 are believed to contain at least some Serbs. Regarding the remainder of the grave sites, reports on approximately 81 do not contain information regarding ethnicity. Some grave sites are reported to contain bodies from more than one warring faction. 75/ However, these numbers do not reflect whether the grave sites contain bodies of civilians and other non-combatants or the bodies of soldiers killed in combat.

258. The number of bodies said to be contained in the reported grave sites are as follows: 25 grave sites contain less than 10 bodies; 16 grave sites contain at least 10 to 20 bodies; 29 grave sites contain at least 20 to 50 victims; 22 grave sites contain at least 50 to 100 bodies; 20 grave sites contain at least 100 to 500 bodies; and 13 grave sites contain 500 bodies or more. Sixty-two of the sites did not have a specific number of bodies.

259. Persons buried in 81 of the reported grave sites are alleged to have been killed by Serbs; 16 of the sites contain individuals reportedly killed by Croats; and 5 contain bodies reportedly killed by Muslims. The remainder of the reports on 87 mass graves do not identify the ethnicity of the perpetrator. Again, it should be noted that the individual or faction that was responsible for the killing may not have been responsible for the creation of the mass grave. 76/

260. Many alleged mass graves are situated at or near the sites of identified detention facilities. In the Prijedor region alone, there are approximately 62 grave sites, some of which are said to contain the remains of prisoners killed at Omarska Camp, Keraterm Camp, and other camps located in the area. The Brčko area, where the Luka Camp was located, may contain between 5 and 10 mass grave sites. Grave sites are also clustered in Foča, Mostar, Kotor Varos, Pakračka Poljana (see paras. 277-284) and Marino Selo.

261. At least 99 of the alleged mass grave sites appear to contain victims of mass killings. In these instances, the source of information clearly detailed the circumstances of the killing or provided witness testimony. 77/ Thus, as more information becomes available, this number may change. In addition, the number of graves which allegedly contain at least 20 bodies, along with much of the source information regarding how many of the grave sites were created, suggests that this number will increase. This is particularly true at those sites which were at or near detention facilities. The data, including witness statements, indicate that many of those buried in mass graves were former prisoners in the various detention facilities throughout the territory.

262. It should be noted that, as indicated above, the existence of mass graves does not necessarily mean that persons were unlawfully killed. However, there are several provisions of the Geneva Conventions which outline the treatment and burial of those killed during wartime. In some instances, these provisions may have been violated by those burying the dead in collective graves without proper identification. 78/ Thus, a mass grave may be important not only as a potential repository of evidence of a mass killing, but the method and manner by which the grave is created may itself be a war crime.

263. The Commission believes that it is particularly significant to investigate mass graves in order to help resolve the problem of missing persons. 79/ This is of vital importance to their families. Investigations of mass graves will also help to discover evidence of criminality.

264. If the existence of the numerous mass graves situated at or near identified detention facilities were to be confirmed, such confirmation would be relevant to the inquiry into "ethnic cleansing" (see paras. 129-150).

H. Investigation of grave sites at Ovčara near Vukovar (UNPA, Sector East, Croatia) 79a/

265. As indicated in its first and second interim reports, the Commission had been intending for some time to conduct an investigation of the Ovčara grave site in Sector East, which was reported to contain the bodies of about 200 persons who were in the Vukovar Hospital in November 1991 when the city fell to Serb forces. The investigation would involve the exhumation of the bodies contained in the mass grave site, the collection of physical evidence at the grave site, the transport of the bodies to a morgue facility, the autopsy examination of the bodies to establish identification and the cause/manner of death and, in time, the collection of other types of evidence, including testimonial evidence, so that criminal responsibility for the killings related to the bodies in the grave could be determined.

266. The Commission faced some logistical difficulties in preparing for the Ovčara investigation. However, all of these difficulties were eventually overcome and the Commission obtained the assistance of an international team of investigators.

267. The only obstacle which the Commission could not overcome was political - obtaining viable assurances and permissions from the political authorities controlling the areas.

268. In an effort to obtain the necessary political assurances, the Commission made visits to Vukovar in March, July, October and November; to Belgrade in March and April; and to Knin in May, September and October. In addition, the Commission exchanged numerous pieces of correspondence with various authorities in these locations. The approach taken by the Commission was that, as a matter of balance, the Commission would attempt to excavate a second mass grave site in Sector West that was believed to contain Serb victims at essentially the same time as it conducted the Ovčara excavation. The Commission and the local authorities at various times also discussed issues, including the location for post mortem examinations, the presence of observers during the investigation, and the concerns of "Serb Republic of Krajina" officials about the use of Sector West by Croatian authorities as a site for radioactive waste disposal.

269. Following a meeting at Knin with the administration of the "Serb Republic of Krajina" on 5 September 1993, it was the view of the Commission that it had obtained the necessary approvals in writing to conduct the Ovčara excavation. As a matter of balance, while the bodies at Ovčara were being exhumed and an autopsy examination was being conducted to establish identification and the cause/manner of death, a preliminary site survey would be conducted at a presumed mass gravesite in the Pakračka Poljana/Marino Selo area in Sector West and a preliminary radiological survey would also be conducted in Sector West. On the basis of this understanding, the Commission decided to send an investigative mission to Zagreb in early October and to Sectors West and East during the week of 17 October.

270. On 14 and 15 October, the Commission met with the administration of the "Serb Republic of Krajina" at Knin to obtain additional written authorization to proceed with the Ovčara excavation and to address newly raised concerns of the "Serb Republic of Krajina" about the location of the morgue facility. The authorities of the "Serb Republic of Krajina" insisted that post-mortem examinations could not be conducted in Croatia. Although the Commission had intended to have the post-mortem examinations conducted at Zagreb, the Commission agreed to endeavour to locate a place for these examinations which would be acceptable to the administration of the "Serb Republic of Krajina". The Commission also agreed to the presence of observers of the "Serb Republic of Krajina" at the sites during the investigations. On receipt of this assurance, the administration of the "Serb Republic of Krajina" issued several documents providing cooperation and authorizing the Commission to proceed with the investigation.

271. The teams were deployed from Zagreb to Sector East on 19 October. On arrival in Sector East on the evening of 19 October, the on-site rapporteur was informed by UNPROFOR that a meeting with Sector East administration of the "Serb Republic of Krajina", in particular Colonel Milanovic, was a condition precedent to commencement of the excavation. In the interim, and with the acquiescence of the UNPROFOR Sector Commander, the various teams went to the Ovčara site on 20 and 21 October to conduct a second site survey, which would not involve any excavation. The site had been secured by UNPROFOR since it was originally

identified in December 1992. During the site survey, the site was checked for unexploded ordinance by UNPROFOR; brush was cleared; the area was surveyed in detail with a range of equipment; and a certain amount of physical evidence, including spent cartridge cases and some cloth, was recovered.

272. On 22 October, the representatives of the Commission met with Colonel Milanovic in Erdut and was informed that, notwithstanding the various approvals received at Knin on 14 and 15 October, the Parliament of the "Serb Republic of Krajina" had taken a decision on 21 October requiring the Commission to postpone all activity at Ovčara until a political solution was found to the situation in the former Yugoslavia. Following the meeting, all personnel were withdrawn from the Ovčara site to their accommodations at Klissa and Erdut. After consultation with UNPROFOR, it was decided that any attempt to continue the project after this decision by the "local administration" would expose the project personnel and UNPROFOR personnel to an excessive degree of risk.

273. Although efforts were made to rehabilitate the Ovčara project in the ensuing weeks, including a Commission meeting with Mr. Bjegovic, Prime Minister of the "Serb Republic of Krajina" at Knin on 30 October, none of these efforts were successful. No one affiliated with the Commission has returned to the site, which remains under UNPROFOR protection, since 22 October.

274. In order to make the most effective use of project personnel, once it became apparent by midday on 24 October that there would be no rapid change of position on the part of the local administration, project personnel were shifted over a period of time from Sector East to Sector West and elsewhere. The last person and the last piece of equipment was out of Sector East by 30 October. Sufficient material and personnel resources were, however, retained in Croatia until about 10 November so that the Ovčara excavation could be conducted if adequate political approval was obtained. After 10 November, the onset of cold weather made the project impracticable before the spring of 1994. Appropriate political approval was not obtained before 10 November.

275. On 17 November 1993, the representatives of the Commission met with Mr. Hadzic, President of the "Serb Republic of Krajina", at his initiative at Erdut. Also at the meeting were Mr. Niksic, "Vice-Chairman of the Regional Council", and Colonel Milanovic, Deputy Minister of Defence of the "Serb Republic of Krajina". Note no. 1-234-93, dated 16 November, was presented to the on-site rapporteur, under the signature of Mr. Hadzic, stating that the following decisions had been reached:

(a) The authorities of the "Serb Republic of Krajina" agreed to cooperate in and give their approval for the excavations on the site of Ovčara, in the municipality of Vukovar;

(b) The excavation activities could start in March or April the following year, when the weather conditions improved;

(c) The authorities of the "Serb Republic of Krajina" would appoint one member to observe the activities of the Commission;

(d) The "President of the Republic", Mr. Hadzic, had approved the above-stated items and was willing to cooperate fully with the Commission.

276. Owing to weather conditions, the Commission had to postpone resumption of the investigation until the spring of 1994. In so far as the Commission's work was terminated as of 30 April, all relevant documents for this investigation have now been passed on to the Office of the Prosecutor for the International Tribunal. The site remains under UNPROFOR protection, but no criminal investigation related to this mass grave excavation has been conducted to date.

I. Investigation of grave sites near Pakračka Poljana (UNPA, Sector West, Croatia) 80/

277. During the March 1993 reconnaissance mission, the Commission became aware of the need to conduct a second mass grave excavation at a site, which would probably contain Serb bodies, at essentially the same time as the Ovčara excavation, which would probably be found to contain Croatian bodies. At the same time, it was informed of a number of probable clandestine grave sites near Pakračka Poljana in Sector West, which were believed to contain a large number of Serb bodies. For reasons related to the security of the sites and of potential witnesses, the Commission avoided visiting the sites at that time.

278. In October 1993, when the Commission was in a position to conduct a mass grave excavation, it decided to have Physicians for Human Rights conduct a preliminary site survey at Pakračka Poljana to confirm the existence of a mass grave. At the time this decision was taken, it was considered that the Pakračka Poljana location was the location in the United Nations protected areas (UNPAs) most likely to be the site of a mass grave containing Serb victims.

279. From 20 October to 9 November 1993, the Commission deployed teams to the area. The numbers of members of each group varied over time, as persons were shifted from the Ovčara site to Pakračka Poljana.

280. The Commission received a particularly high level of support from UNPROFOR during this investigation.

281. The forensic report on this preliminary site investigation reached the following conclusions:

(a) Nineteen individuals (16 males, 3 females) were buried in nine separate graves in a field south of Pakračka Poljana. The graves were shallow and appeared to have been dug by hand. Leaves found in the bottom of some graves and the clothing on several individuals, including heavy jackets and sweaters, suggests that burials took place in the autumn or early winter;

(b) The area around the graves was used as an execution site. Expended .22-calibre, .25-calibre, 9mm-calibre and 7.62 x 39mm-calibre cartridge cases were found adjacent to six of the graves. Expended rounds were also found near some of the bodies or recovered from clothing. Five of the bodies had their hands tied with rope. Other bodies had their hands together, sometimes in extremely awkward positions, but no rope was found during the excavations. It

is possible that the hands had been bound but that the binding was made of a natural fibre that disintegrated. Fifteen of the bodies exhibited gunshot wounds to the head, two had blunt head trauma, one had multiple gunshot wounds to the arm and leg and one had massive head trauma;

(c) The nine graves are clandestine burials. The isolated location of the graves suggests that the executioners intended to bury their victims secretly. The graves were within a short distance of a road that could be accessed by a truck or other vehicle. The graves were also adjacent to large, woody vegetation that screened the area from at least one direction;

(d) There was no indication that the graves had been disturbed since the time of internment.

282. Although the Pakračka Poljana site was believed to be the site of mass graves containing up to 1,700 bodies, the site was examined with considerable care. Seventy-one holes were dug at the site. The very firmly based conclusion was reached that this belief was erroneous.

283. On 9 November 1993, the 19 exhumed bodies were placed in body bags together with preservative chemicals and reburied at a site immediately adjacent to an UNPROFOR observation post. Before this step was taken, some consideration was given to the possibility of conducting an autopsy examination of the bodies to establish identification and the cause/manner of death and to the possibility of gathering some additional ante-mortem information by interviewing selected persons in the area. These activities were not undertaken owing to previously expressed "Serb Republic of Krajina" concerns that post-mortems not be done in Croatia on account of the difficulty of obtaining a suitable morgue facility. Also, time and personnel resources would not permit the intensive effort required to conduct a criminal investigation and to gather all available ante-mortem information.

284. Responsibility for obtaining additional information and for continuing this investigation has now been passed to the Office of the Prosecutor of the International Tribunal.

J. Destruction of cultural property

285. In determining the extent of the destruction of cultural property in the former Yugoslavia, the Commission proceeded under its overall plan of work and made use more particularly of its database and reports by international organizations, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Parliamentary Assembly of the Council of Europe and other intergovernmental sources and non-governmental organizations.

286. The Commission has received extensive information on destruction of cultural property, but it was not in a position to investigate all these allegations. In particular, it could not verify allegations that all Catholic churches and mosques in Serb-occupied territories of Bosnia had been systematically destroyed or damaged. Since the Commission could not consider,

let alone investigate, all allegations of damage to cultural property, 81/ it has selected two examples which are typical of such breaches.

287. The two examples chosen by the Commission were the battle of Dubrovnik (see paras. 298-301) and the destruction of the Mostar Bridge.

288. In the autumn of 1991, the region of Dubrovnik was surrounded and besieged by the Yugoslav National Army. After a few weeks, Dubrovnik itself was cut off by land and sea by the forces of the former Yugoslavia. This situation continued up to the autumn of 1992, when the district of Dubrovnik was recognized as forming part of the Republic of Croatia. The military occupation of the district of Dubrovnik captured international attention because of the cultural and historical significance of the region and the town. Dubrovnik is now known as an old town which has suffered great damage as a result of the Serbian attacks. In 1979, the old town had been included in UNESCO's list of the world's cultural heritage.

289. The attacks on Dubrovnik started with the Serbian paramilitary forces, supported by Yugoslavia's regular army, in June and August 1991. On 1 October 1991 the Yugoslav Army invaded the district of Dubrovnik and laid siege to the town. It may be affirmed that there was virtually no defence of Dubrovnik and the surrounding area against the Yugoslav forces. Thus the destruction could on no account be justified as a military necessity.

290. The siege of Dubrovnik lasted from October until December. The first shelling began on 1 October and continued sporadically until 24 October 1991. After a short lull, the shelling started up again on 30 October and continued into December. The shelling on 6 December 1991 was especially intensive. The shelling was selective and deliberately aimed at the buildings in the old town and there is no doubt that the destruction of cultural property was intentional. However, the people doing the firing did not only hit the old town. The new town was also hit.

291. According to estimates, 55.9 per cent of the buildings of the old town were affected, either by fires or by damage to the structures and special elements or to the facades and roofs. Several palaces had their roofs either destroyed or burned, including the Festival Palace, whose archives were completely destroyed, and a number of monuments whose roofs caved in. Other examples are St. Blaise's Church, the Franciscan Cathedral and Convent, the Dominican Convent, St. Clair's Convent and the Fountain of Onofrio; and, of course, there was the destruction of the roofs of the old town. In this respect, the local authorities list 336 direct hits and 254 cases of partial destruction of roofs by shell fragments.

292. From the UNESCO experts' assessment, the total damaged roof areas can be estimated at 56,747 m^2. To this visible damage, the experts of the Commission have added damage resulting from vibrations, which may appear later, as well as the damage which simply could not be detected at the time the UNESCO experts were carrying out their work.

293. Thus, in respect of the statute of the International Tribunal, the offences in Dubrovnik can be said to concern extensive destruction and appropriation of property not justified by military necessity and seizure or destruction and

damage to religious institutions dedicated to charity, education, the arts and sciences as well as historic monuments and artistic and scientific works.

294. The concept of military objective should also be considered in this connection in order to shed light on the crimes committed. Indeed, it seems quite clear that this destruction of cultural property did not in any way contribute to the military action and could in no way be considered necessary in terms of the military objectives pursued. Nor is there any way that the perpetrators of these crimes can claim to have been utilizing the monuments for military purposes. In the Commission's view, other concepts in addition to military objectives should be applied: the concepts of undefended place or object, of proportionality and of neutrality.

295. At 10.16 a.m. on 9 November 1993, Mostar Bridge was destroyed. In this connection, the Institute for the Protection of the Historic and Natural Cultural Heritage of Bosnia and Herzegovina has accused the Croatian Defence Council and the Croatian Army in a letter to UNESCO dated 10 November 1993. This letter and other documents attached to the present report describe the history of the bridge, which was built between 1557 and 1566 according to the plans of the Turkish architect Aerudin. It is a monument which, unfortunately, did not appear in the UNESCO list. However, this bridge was well known to the population in the region, whether Serbian, Croatian or Muslim. Moreover, the bridge was a symbol of Bosnia and Herzegovina which connected the gap between the Muslim and Croat communities. It embodied the links which united these peoples in spite of their religious differences and the circumstances of the present war. There can be no doubt, however, that it was of greater value to the Muslims.

296. Admittedly, before it was destroyed, the bridge had already suffered a certain amount of damage. Indeed, damage had already been done to its northern parapets. But, all things considered, the damage had been minor. The initial objective, it would seem, had been to discourage people from using it. Thus, prior to November 1993, the primary target had been the parapet, forcing anyone who might be tempted to cross the bridge to refrain from doing so. However, the shelling on 8 November 1993 clearly aimed at destroying the bridge. This destruction was carried out by tanks belonging apparently to the Croatian forces. On 9 November, the shelling continued. It was then that the supporting arch of the southern end of the bridge was hit and collapsed. It would seem that this incident was filmed by Folio Productions (a British production company).

297. The same criminal characterization which applies to the battle of Dubrovnik also applies to the destruction of Mostar Bridge, which was also devoid of any military significance. It would seem that the Croats were at the origin of the destruction of Mostar Bridge. A Mostar district military tribunal reportedly interrogated three Croatian Defence Council soldiers, who allegedly acted, according to a statement by the tribunal, "on their own initiative, without orders from their superiors". 82/ Clearly, these are questions of fact which have to be decided judicially to determine both individual responsibility and command responsibility.

K. Dubrovnik investigation 83/

298. The Commission sent an investigative team of Canadian and Norwegian military lawyers and a French art historian to Dubrovnik for the period 20 October to 4 November 1993. The objective of the investigation was to prepare a law of armed conflict study of the battle of Dubrovnik which would attempt, among other things:

(a) To determine whether and when indiscriminate attacks or deliberate attacks on civilian persons or civilian objects occurred;

(b) To quantify the loss of civilian life, injury to civilian persons, and damage to civilian property, including cultural property;

(c) To attribute responsibility for apparent violations of the law of armed conflict.

299. On the basis of this investigation, the Commission finds that at least 82, and possibly as many as 88, civilians were killed as a result of JNA military operations in the district of Dubrovnik during the period from September 1991 until December 1992, inclusive, and that most of these persons were killed in 1991. Thirteen civilians were killed during the St. Nicholas Day bombardment of 6 December 1991. The Institute for the Restoration of Dubrovnik has completed a study of damage to housing in the district of Dubrovnik which the Commission accepts. The Institute estimates that the cost of reconstructing housing alone will be DM 69,000,000, while the cost of complete reinstallation of families will be DM 480,000,000 (prices on 31 December 1990). Detailed reports on damage to cultural property have been prepared by UNESCO, the Institute for the Protection of Cultural Monuments and the Natural Environment of Dubrovnik and the Parliamentary Assembly of the Council of Europe which the Commission has accepted as a basis for their investigation. These reports indicate in particular that a substantial amount of damage was caused to cultural property in the old town of Dubrovnik, mostly during the St. Nicholas Day bombardment.

300. It is the finding of the Commission that the St. Nicholas Day bombardment of 6 December 1991 was a deliberate attack on civilian persons and on civilian objects, including cultural property. It is the finding of the Commission that it is possible to determine the precise identity and status of persons killed or injured during the bombardment and to confirm the extent of civilian property damaged during the bombardment, the unit responsible for the bombardment, the identity of the unit commander and the identity and position in the chain of command of more senior officers responsible for the bombardment.

301. It is the view of the Commission that it is possible to develop prima facie cases directed against one or more officers responsible for the St. Nicholas Day bombardment and that it may be possible to develop cases concerning other incidents in the district of Dubrovnik.

L. Radiological investigation (UNPA, Sector West) 84/

302. As the administration of the "Serb Republic of Krajina" had expressed concern about the use of sites in Sector West for radioactive waste disposal, the Commission agreed to send a team of experts to conduct a preliminary radiological survey in the Sector. Information provided by the administration of the "Serb Republic of Krajina" about the radioactive waste sites was extremely sparse. Two nuclear biological chemical specialists were deployed to Sector West with one (Netherlands) United Nations support detachment.

303. The specialists reached the following conclusions:

(a) The nuclear activity measured in Sector West proved not to be any higher than the normal background radiation. In addition, examination of five soil samples proved that the quantity of radioactive materials in the samples could be considered as normal. These radioactive materials contribute to the level of background radiation;

(b) There were no detectable signs of physical presence of any nuclear waste in the areas searched.

304. The investigation was as thorough as time would permit, and a wide range of possible dump sites were visited with uniform negative results.

305. However, in March and April 1994, the administration of the "Serb Republic of Krajina" provided new information on the location of possible waste dump sites. As the Commission was informed that it had to terminate its work by 30 April 1994, this additional information was passed to the Office of the Prosecutor of the International Tribunal.

V. GENERAL CONCLUSIONS AND RECOMMENDATIONS

306. The disintegration of a federal State, as in the case of the former Yugoslavia, is often at first a civil conflict. However, as the respective States of Slovenia, Croatia and Bosnia and Herzegovina declared their independence, received international recognition and were admitted to membership in the United Nations, the conflict with respect to each of these States became an international conflict. 85/ The first interim report stated:

> "45. The Commission is of the opinion, however, that the character and complexity of the armed conflicts concerned, combined with the web of agreements on humanitarian issues the parties have concluded among themselves, justify an approach whereby it applies the law applicable in international armed conflicts to the entirety of the armed conflicts in the territory of the former Yugoslavia."

307. However, the precise time at which the different stages of this multi-party conflict became or ceased to be a conflict of an international character must be determined by a review of legally relevant facts. This determination must be made by the International Tribunal. In the event the Tribunal concludes that the conflict is of an international character, the "grave breaches" provisions

of the Geneva Conventions of 12 August 1949 shall apply, as well as Additional Protocol I of 1977, as do other norms of international humanitarian law. With respect to other periods, common article 3 of the 1949 Geneva Conventions and Protocol II apply, as do other norms of international humanitarian law.

308. The Commission emphasizes that the conventional and customary international law norms on crimes against humanity and genocide apply to the entirety of this conflict. This is the case irrespective of whether the conflict is determined to be of an international or non-international character.

309. The Commission also concurs with respect to the provisions of applicable law contained in the statute of the International Tribunal. Indeed, in its first interim report (paras. 36-46), the Commission had taken the position which the Security Council later adopted in resolution 827 (1993). The Commission recognizes, however, that Protocols I and II are also part of the applicable law.

310. Reports received and investigations conducted by the Commission indicate that the level of victimization in this conflict has been high. The crimes committed have been particularly brutal and ferocious in their execution. 86/ The Commission has not been able to verify each report; however, the magnitude of victimization is clearly enormous. 87/

311. The Commission finds significant evidence of and information about the commission of grave breaches of the Geneva Conventions and other violations of international humanitarian law which have been communicated to the Office of the Prosecutor of the International Tribunal.

312. Some of the conclusions relative to these violations are reflected in the present report, but for obvious reasons information and evidence of a prosecutorial nature are not described herein.

313. The practices of "ethnic cleansing" (see paras. 129-150), sexual assault and rape (see paras. 232-253 and 230) have been carried out by some of the parties so systematically that they strongly appear to be the product of a policy. The consistent failure to prevent the commission of such crimes and the consistent failure to prosecute and punish the perpetrators of these crimes, clearly evidences the existence of a policy by omission. The consequence of this conclusion is that command responsibility can be established.

314. Knowledge of these grave breaches and violations of international humanitarian law can reasonably be inferred from consistent and repeated practices.

315. The domestic criminal laws of the former Socialist Federal Republic of Yugoslavia and the criminal codes of all the republics formerly comprising it contain prohibitions against the violations that have taken place. Therefore, there should be no doubt in anyone's mind that such acts as murder, torture, rape, robbery and theft constitute crimes.

316. The observations set forth in paragraphs 110 to 127 on the military structure of the warring factions and the strategies and tactics they employ may

reveal an initial state of confusion, reducing the effectiveness of command and control. This apparent confused state of affairs continued well beyond the initial stages of the respective conflicts. This leads to the conclusion that the existence of separate military structures and the multiplicity of units may well have been intended by some of the parties. The confusion may be intended to permit senior military and political leaders to argue lack of knowledge of what was happening and inability to control such unlawful conduct.

317. Notwithstanding the strong feelings of the warring factions concerning their victimization, both historical and contemporary arguments concerning reprisals (see paras. 63-66) and superior orders (see paras. 61 and 62) do not constitute a defence under the well-established law of international armed conflict and under the national laws of the parties to the conflict.

318. The type, range and duration of the violations described in the present report strongly imply command responsibility by commission and omission and also indicate that the absolute defence of obedience to superior orders is invalid and unfounded (ibid.). This is particularly evident in view of the loose command and control structure where unlawful orders could have been disobeyed without individuals risking personal harm. Indeed, some did. A moral choice usually existed. Individual cases, however, will have to be judged on their respective merits in accordance with the statute of the International Tribunal.

319. The Commission is shocked by the high level of victimization and the manner in which these crimes were committed, as are the populations of all the parties to the conflict. The difference is that each side sees only its own victimization, and not what their side has done to others.

320. It is particularly striking to note the victims' high expectations that this Commission will establish the truth and that the International Tribunal will provide justice. All sides expect this. Thus, the conclusion is inescapable that peace in the future requires justice, and that justice starts with establishing the truth. 88/ The Commission would be remiss if it did not emphasize the high expectation of justice conveyed by the parties to the conflict, as well as by victims, intergovernmental organizations, non-governmental organizations, the media and world public opinion. Consequently, the International Tribunal must be given the necessary resources and support to meet these expectations and accomplish its task. Furthermore, popular expectations of a new world order based on the international rule of law require no less than effective and permanent institutions of international justice. The International Tribunal for the Prosecution of Persons Responsible for Serious Violation of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 must, therefore, be given the opportunity to produce the momentum for this future evolution.

321. The Commission requests the Secretary-General to publish this report and its annexes in their entirety and to give them the widest possible dissemination in order to inform Member States and the interested public.

Notes

1/ Sessions were held on the following dates:

First session	-	4-5 November 1992
Second session	-	14-16 December 1992
Third session	-	25-26 January 1993
Fourth session	-	1-3 March 1993
Fifth session	-	24-25 May 1993
Sixth session	-	13-14 July 1993
Seventh session	-	30-31 August 1993
Eighth session	-	27 October 1993
Ninth session	-	14-15 December 1993
Tenth session	-	11-12 January 1994
Eleventh session	-	15-16 February 1994
Twelfth session	-	11-15 April 1994

All the sessions, except the first one, which was convened in New York, have been held at Geneva.

2/ The funding for these contributed services was provided by DePaul University and grants to the University from the Open Society Fund and the John D. and Catherine T. MacArthur Foundation.

3/ On 29 August 1993, in response to the Secretary-General's request, the Commission submitted a non-paper indicating that it proposed to end its work on 31 July 1994. The Commission's second interim report, submitted by the Secretary-General to the Security Council on 5 October 1993, reflected a plan of action based on a 31 July 1994 schedule.

4/ The contributions received were as follows:

Country	Amount (US$)
Austria	20 000
Canada	237 869
Czech Republic	1 000
Denmark	15 201
Germany	16 000
Hungary	3 000
Iceland	500
Liechtenstein	3 184
Micronesia	300
Morocco	5 000
Netherlands	260 152
New Zealand	53 492
Norway	49 978
Sweden	94 955
Switzerland	50 000
Turkey	10 000
United States of America	500 000
TOTAL	1 320 631

Notes (continued)

5/ Because of the positive balance in the Trust Fund at the conclusion of the Commission's work, the Commission urges the Secretary-General to seek the Controller's authorization to use these funds for the publication of the annexes.

6/ See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (12 August 1949); Geneva Convention Relative to the Treatment of Prisoners of War (12 August 1949); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949); United Nations Treaty Series, vol. 75, Nos. 970-973.

7/ 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I).

8/ 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

9/ Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954, United Nations Treaty Series, vol. 249, No. I-3511.

10/ See also Official Records of the General Assembly, Fifth Session, Supplement No. 12 (A/1316).

11/ U.S. v. von Weizsaecker (Ministries Case), 14 Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 at 611 (1949) (the Green Series). See also International Military Tribunal sitting at Nuremberg, reported in Trial of the Major War Criminals before the International Military Tribunal (1949).

12/ General Assembly resolution 260 (III) of 9 December 1948, annex, second and third preambular paragraphs.

13/ From a statement made by Mr. Morozov, representative of the Union of Soviet Socialist Republics, on 19 April 1948 during the debate in the Ad Hoc Committee on Genocide (E/AC.25/SR.12).

14/ See Vienna Convention on the Law of Treaties, opened for signature on 23 May 1969, United Nations Treaty Series, vol. 1155, No. I-18232.

Notes (continued)

15/ See Report on the question of prevention and punishment of the crime of genocide (E/CN.4/Sub.2/1985/6), para. 29, which states:

> "'In part' would seem to imply a reasonable significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership. ... considerations of both proportionate scale and of total numbers are relevant".

16/ See annex II.

17/ S/25704, annex, art. 2 (Grave breaches of the Geneva Conventions; art. 3 (Violation of the law and customs of war); art. 4 (Crimes against humanity); and art. 5 (Genocide). It is to be noted that under article 4, rape is specifically listed even though the conventional and customary international law defining crimes against humanity does not list it specifically, but includes it as part of "other inhumane acts".

18/ Violent crimes of a homosexual nature are not explicitly mentioned in international humanitarian law, but protection against rape and other sexual assaults is also applicable to men on the basis of equality and non-discrimination.

19/ See the Convention on the Rights of the Child adopted by the General Assembly on 20 November 1989 (resolution 44/25), and the World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration (A/45/625, annex).

20/ In his commentary on article 5 of the statute, the Secretary-General also seems to consider rape and other sexual assaults to be connected, as he states in the relevant part: "rape and other forms of sexual assault, including enforced prostitution" (S/25704, para. 48).

21/ Slovenia declared independence on 25 June 1991. Croatia's official date is 8 October 1991, though it first declared independence on 25 July 1991. The Bosnian Government declared independence on 6 March 1992. All three were admitted to membership in the United Nations on 22 May 1992.

22/ The TDFs, however, existed in varying degrees of strength and readiness in the various republics. However, in most cases, they were poorly organized and staffed. Croatia organized a National Guard in April 1991 to replace the territorial defence force. The National Guard consisted mostly of former JNA military personnel from Croatia.

23/ It should be noted that the Army of Bosnia and Herzegovina includes among its ranks Croatian and Serbian personnel. Also, Croatian Defence Council units have on occasion either been part of Bosnian Government operations or have fought alongside the Bosnian Government Forces against the Bosnian Serb Army.

Notes (continued)

24/ Some of these special forces operate in localized areas, while others move freely to different theatres of operation, frequently going from one state to another within the territory of the former Yugoslavia. Several of the special forces come from Serbia proper or have close links to Serbia, like Arkan's "Tigers", Šešelj's "White Eagles", Captain Dragan's forces, Serb Falcons (Sinisa Uucinic) and others. The Serbian People's Renewal Party also had a paramilitary organization which interrelated with the White Eagles. Serbian special forces from Krajina, like "Martic's Militia", operate predominantly in the UNPAs (Croatia). Other special forces from Croatia are tied to the Croatian Government's political and army figures. The HOS, which is reminiscent of the Second-World-War Ustachi, for example, have been substantially absorbed into the Croatian Defence Council. The mujahidin operate independently of the Bosnian Government Army. Muslims from Bosnia and Herzegovina formed paramilitary units in 1991. Two such Muslim groups are called Green Berets and the Patriotic League of the People. All special forces have expatriate volunteers and some use foreign mercenaries.

25/ Arkan's name is Zeljko Raznjatovic. Interpol has several outstanding warrants for his arrest. The warrants are for a variety of crimes, including bank robbery and investigations relating to political assassination in different European countries. He escaped from prison on bank robbery charges in the Netherlands and Sweden, where he is currently a wanted criminal. He is reputed to have been involved in murder for hire and to have connections with organized crime in Europe. His group has committed the entire range of crimes described above and in other parts of this report in Croatia and Bosnia and Herzegovina. The Tigers have used expatriates and mercenaries in the commission of these crimes. JNA seems to arm and support the Tigers. The crimes committed by this group started in 1991 in the war in Croatia. In 1992, Arkan was elected to the Kosovo "parliament" and ran in the 1994 parliamentary election of the Federal Republic of Yugoslavia in Belgrade. He has reportedly acquired substantial wealth in Sector East UNPA Croatia and in Belgrade which it is believed he derived from looting and contraband.

26/ Šešelj was a member of the parliament of the Federal Republic of Yugoslavia and leader of the ultra-nationalist Serbian Radical Party, which at one time held one third of the votes. Šešelj's group follows the pre-Second-World-War group called the "Chetniks" who were known for their ultra-right wing monarchial politics. The Second-World-War Chetniks wore the special monarchial emblems with the double headed eagle. The present forces wear the same emblem and also call themselves Chetniks. Like Arkan's Tigers, Šešelj's White Eagles committed the crimes referred to above and in other parts of this report. The group seems to have been armed and supported by JNA. Moreover, since mid-1993, the group is believed to have been under the direct control of JNA. The crimes committed by this group started in 1991 in the war in Croatia. During the 1994 elections in Belgrade, Šešelj and President Slobodan Milosevic publicly traded charges of war crimes and hinted at knowledge of war crimes. This was publicly reported in the media of the Federal Republic of Yugoslavia in October 1993. It was also reported that President Milosevic ordered some forty associates of Šešelj to be prosecuted for rape, and other war crimes. It should also be noted

Notes (continued)

that there were several groups of Chetniks that were not under Šešelj's control. One such unit operated in the Krajina area in Croatia in 1991, and then in Bosnia in 1992, where the group took position around Sarajevo in the fall. The unit is under the command of Slavko Aleksic who operated under the command of the Bosnian Serb Army. (See annex III.A for more detail regarding special forces.)

27/

		Geneva Conventions	Protocol I/ Protocol II
Yugoslavia	(Ratification)	21 April 1950	11 June 1979
Slovenia	(Succession)	26 March 1992	26 March 1992
Croatia	(Succession)	11 May 1992	11 May 1992
Bosnia and Herzegovina	(Succession)	31 December 1992	31 December 1992

28/ See annex IV.

29/ Serbian contemporary reality is particularly affected by history, which is vividly recalled, even when it goes as far back as the battle of Kosovo in 1389. But, more recent events arising out of the Second World War are even more significant in popular perception.

30/ Several reports indicate that individual Serbs acted with courage and generosity in helping persons of other ethnic or religious groups to flee to safety or shield such persons from certain harm. But, in almost all these reports, it is clear that those concerned persons did so surreptitiously, thus emphasizing the overall climate of fear and even terror inspired by those in control.

31/ The arc goes from Gorazde at the bottom of the arc in the East (southeast) near the Drina River, then following the Drina River, north through such cities as Zvornik, Brčko and in a northward direction to the areas of Bjelina, Derventa, Slavonski Brod, Banja Luka and Prijedor. The Drina River is the border between Bosnia and Serbia. The arc continues along the Sava and Korenika Rivers, which are the boundaries with the Serb Krajina area, and follows along eastern and western Slavonia, which are also Serb-inhabited areas in Croatia.

32/ This strategic factor is evident in the attack against Gorazde in April 1994 and in the reports of military preparation for action in the Brčko area.

33/ See, for example, E/CN.4/1994/20.

34/ However, even the involvement of public officials is frequently insufficient to ensure the safety of the forcefully removed civilian population. Some of those evicted were forced to walk across minefields, which resulted in many deaths and severe injuries. Additionally, troops along the confrontation lines opened fire on the civilians who were pushed across the lines.

Notes (continued)

35/ This is due to the fact that the Serb population is notified in advance of an attack. In some areas, this "ethnic cleansing" is done by "special forces" but frequently, it is the very civilian population which lives alongside the Bosnian Muslims in the areas described above who carry out or share in carrying out the criminal practices referred to elsewhere in this report, particularly the Prijedor study, paras. 151-182.

36/ For example, the Krisni Stab of Sanski Most (which is characteristic of other districts) consisted of the Mayor, the Chairman of the Serbian Democratic Party, the leader of the Serbian Democratic Party and the Commander of the Sixth Krajina Brigade.

37/ The evidence obtained in this study is the most specific and detailed of all the Commission's investigations. It was delivered to the Office of the Deputy Prosecutor of the International Tribunal along with other Commission material (see annex IV).

38/ See, for example, a special study undertaken by the Bolzmann Institute of Human Rights (Austria) for the Commission which evidences this conclusion. The study is incorporated in annex IV.

39/ Prior to the autumn of 1992, the Army of the "Bosnian Serb Republic" was referred to as the "Bosnian-Serb Army" (BSA).

40/ Command responsibility by commission and by omission exists (see paras. 55-60), even though the policy of "ethnic cleansing" is carried out in a way which tends to conceal the responsibility of superiors in the political and military hierarchy through a structural separation of army, militia, police and special forces (discussed in paras. 110-128). Considering, however, the extent of these violations, the vast areas over which they occurred and the length of time over which they took place, it is difficult to conceive how responsible commanders can claim ignorance of the violations that have occurred.

41/ This conversion kept local JNA military personnel in Bosnia and Herzegovina, using substantially the same equipment of the former JNA, and thereafter receiving support from Serbia across the Drina River.

42/ Serbs have inhabited the Krajina area and eastern and western Slavonia since the late 1300s and have had a particular historic presence since 1578. But during the Second World War, the Ustachi regime killed a large number of Serbs, whose numbers ranged from a low of 200,000 to a high of 700,000 most of them from these regions. The memory of this tragedy looms large over the apprehensions of Serbs and is a factor in the spiral of violence that took place in the region.

Notes (continued)

43/ Most of Vukovar was razed to the ground. One incident, in particular, will forever symbolize this terrible battle. It is the mass grave at Ovčara, where some 200 plus Croats are believed to have been taken by Serbs from the Vukovar Hospital and summarily executed and then left in a shallow mass grave. The Commission conducted several reconnaissance missions to the areas, discovered the existence of a large number of bodies, collected some evidence and started to exhume the bodies in October 1993. Representatives of the "local Serbian administration" prevented the Commission from continuing its work. The Commission could not undertake the Ovčara and other mass graves investigations. However, before it was obliged to terminate its work, all of the relevant evidence was communicated to the Office of the Prosecutor of the International Tribunal. (For more detail see paras. 265-276 and annexes X, X.A and X.B.)

44/ They are related to the so-called "Herzeg-Bosna Republic". Under the February 1994 Washington Agreement between leaders of Bosnia and Herzegovina and Croatia and Croat leaders from Bosnia and Herzegovina who are part of the so-called "Republic of Herzeg-Bosna", a federation is to be developed within Bosnia and Herzegovina. This was furthered by the Agreement reached between these two groups on 18 March 1994 and signals a positive transformation, hopefully leading to peace between the parties.

45/ Even though that conflict ended in January 1992, violence has continued since then. The evidence secured by the Commission, along with other evidence obtained from UNPROFOR concerning the destruction of the village of Medak in October 1993, was delivered to the Office of the Prosecutor of the International Tribunal. On 19 March 1994, another agreement was reached between the Republic of Croatia and the so-called "Serb Republic of Krajina". (For the Medak study see annex VII.)

46/ This is evidenced by the Croatian Defence Council and Croatian police attacks on the villages of Ahmici-Vitez and Stupni Do in 1993. These attacks would be characterized as representing a certain policy. The first was investigated by the European Community Monitoring Mission and Mr. Mazowiecki, the Special Rapporteur of the Commission on Human Rights. The second was investigated by UNPROFOR. All evidence was delivered to the Office of the Prosecutor of the International Tribunal.

47/ See annex V.

48/ See annex VI. The study on the battle and siege of Sarajevo presents a daily chronology, documenting events in the city from 5 April 1992 to 28 February 1994. The chronology is based on incidents reported in the database, other source materials and media reports. It details, in so far as information is available: daily combat and shelling activity; specific identified targets hit; known damage to targets hit; sniping activity; and total casualties reported. The chronology also contains a narrative of daily military activities and local and international events relating to the battle and siege. The purpose of the chronology is to describe the events and consequences of the battle and siege of Sarajevo and to determine patterns of violations of humanitarian law.

Notes (continued)

49/ There are indications that early in the siege and until late May 1992, the Yugoslav Army (JNA) was involved in the fighting in Sarajevo. Bosnian officials frequently charged that JNA tanks joined Bosnian-Serb forces in barrages, and that the JNA provided the Bosnian-Serb forces with logistical support and protection. In April 1992, the Government of Bosnia and Herzegovina requested the withdrawal of all JNA forces from its soil. The Government of the Federal Republic of Yugoslavia announced that it would withdraw from Bosnia and Herzegovina troops that were not residents of the Republic. Since most of the JNA troops in Bosnia and Herzegovina were Bosnian Serbs, the withdrawal of other troops had limited impact on the Serbian forces, as an estimated 80,000 Yugoslav soldiers were transferred with their equipment to the "Serb Republic of Bosnia".

50/ It has been observed that the besieging forces have often increased their artillery attacks on Bosnian Government-controlled areas of the city prior to and during international peace conferences or other negotiations. One explanation for this increased shelling activity is that the besieging forces are using the siege of Sarajevo presumably as a means to politically pressure the Government of Bosnia and Herzegovina to agree to terms which are important to the Bosnian Serbs.

51/ It has been observed that the besieging forces have on many occasions increased shell fire in reaction to statements made by local political leaders. It has also been observed that the besieging forces seem to calculate events and the risks that they can take in relation to threats by third-party Governments and organizations. In this regard, when threats by third-party Governments or organizations are not perceived as immediate, the besieging forces increase or continue their shelling of the city. For example, Sarajevo was hit with a siege-high 3,777 shells on 22 July 1993 after the United States ruled out direct intervention to prevent the shelling of the city. The opposite behaviour was observed in August 1993, when President Clinton warned that the United States would consider bombing Serbian forces if the shelling of Sarajevo continued. When this threat appeared immediate, the attacks on Sarajevo diminished and Serbian troops were withdrawn from the surrounding mountains to the south-west. Likewise in reaction to the ultimatum by the North Atlantic Treaty Organization (NATO) on 9 February 1994, which gave Bosnian Serb forces 10 days to withdraw their heavy weapons or face heavy airstrikes, the besieging forces substantially complied and curtailed their shelling of the city. This behaviour suggests that there is a centralized command and control of the besieging forces and that when there is pressure for the shelling to stop, it does.

52/ See annex VI.A.

53/ This research was conducted on the basis of information available in the database and reported in paras. 183-193. For a daily chronology, see annex VI.

54/ See annex VII.

Notes (continued)

55/ See annex VIII. See also reports of the Conference on Security and Cooperation in Europe: Report of the Thompson CSCE mission to the detention camps in Bosnia and Herzegovina (see S/24583); Report of the mission to Bosnia and Herzegovina and to Croatia (composed of Mr. H. Corell, Mr. H. Tuerk and Ms. Gro Hillestad Thune) under the Moscow Human Dimension Mechanism of the CSCE (30 September-5 October 1992).

56/ ICRC information on this subject has not been made available to the Commission, as the ICRC deemed it to be confidential.

57/ Annex VIII contains details that support and amplify the ensuing summary.

58/ During a mission of the Commission to Tuzla, the medical personnel of the hospital reported a large number of rapes, with the victims ranging in age from 5 to 81 years old. The Commission has not been able, however, to verify these allegations.

59/ See annexes IX and IX.A.

60/ See E/CN.4/1993/50. The fears of victims are both real to them and weigh heavily on their decision to speak out about their traumatic victimization.

61/ See annex IX. The figures reported below are approximate because, notwithstanding careful scrutiny, some of the reported incidents may be repeated.

62/ In some reports, numbers are supplied instead of names to protect the identity of the victims. However, the submitting party has the true identity of the victim on file.

63/ Other factors perhaps contributing to the correlation may include: the fact that some mass movements of people involved in "ethnic cleansing" had already occurred; or that mass media attention and insensitive treatment of victims combined with "fatigue" among victims resulted in a decline in the number of reported rapes. Alternatively, the public simply became less interested in the issue, and journalists stopped pursuing the stories.

64/ The Commission met with a Sarajevo medical team concerned with the care of rape victims and spoke with two teen-age rape victims during its visit in April.

Notes (continued)

65/ This investigation of rape and other sexual assaults was conducted by the Commission with 11 teams of female lawyers (from Finland, the United States, Canada, Bangladesh and Ireland), who conducted interviews, and 8 female (and 2 male) mental health specialists (from the United States), who worked to support the process. The professional members of the teams volunteered their time to this investigation. This is the first time that such an investigation has been conducted in time of war by women seeking to determine the facts about rape and other forms of sexual assault (see annex IX.A). It is noteworthy that, notwithstanding the understandable fears and apprehensions of the victims and witnesses, 223 of them voluntarily agreed to speak to the Commission's team of interviewers. Every member of the team first approached interviewees with expressions of human solidarity and concern. Invariably to such traumatized victims, the mere fact that a United Nations body tangibly expressed its concern for them was comforting and uplifting. Almost all interviewees expressed their appreciation to the interviewers in the warmest ways. If nothing else, this unique investigation brought some human comfort and support to these victims. During the last few days of interviewing, the Commission's field officers received an average of 15 calls a day from victims and witnesses wanting to meet an interviewer. Unfortunately, the investigation had to be concluded on 31 March, because the Commission had to end its work on 30 April 1994. Phase I of the investigation took place in Croatia. Phase II took place in third countries, such as Slovenia and Austria. It was not possible to conduct an investigation in the territory of the Federal Republic of Yugoslavia, as the Commission had requested from that Government. Interviews which provided information about other violations of international humanitarian law are dealt with in other relevant chapters of the present report. Investigations were also conducted in Austria and Sweden for the Commission, but their results are not included in the present summary because of special confidentiality considerations.

66/ One victim reported an attempted rape in her home.

67/ This number does not include rapes witnessed by rape victims themselves.

68/ In addition to the cases of rape and sexual assault, the interviews gathered important information regarding mass executions and mass torture, particularly in the detention camp context.

69/ As stated in footnote 65 above, the Commission had the opportunity to pursue further interviews in Croatia. In addition, the Government of Turkey invited the Commission to conduct interviews in that country. However, the Commission could not do either, because it was required to conclude its work by 30 April 1994.

Notes (continued)

70/ The patterns have been identified for the purposes of analysis only and, to some extent, they overlap. Thus, some cases illustrate more than one pattern, while, on the other hand, not all cases fall within these five categories identified. The use of these interviews as illustrations is not a definitive characterization of the type of rape in question, as in some cases further investigation is needed.

71/ Out of the 514 allegations which are included in the database, 327 occurred in places of detention.

72/ It should be noted that several victims have reported acts of courage and generosity by Serbs who tried and at times succeeded in saving and sparing victims from death, torture and rape. Such acts should be acknowledged and recognized.

73/ See annex X.

74/ Multiple reports of graves containing different information regarding location or number of bodies, while possibly involving some duplication, have been included since there is no means of ascertaining whether the reports refer to the same grave or different ones.

75/ For example, there are at least nine reported grave sites in north-west Bosnia and Herzegovina which may contain both Muslim and Croat victims. These grave sites are located in Brisevo, Raljas, Stara Rijeka, Redak, Ljubija, Volaric, Jubovci, Biscani-Sredice and the Kurevo Forest.

76/ This would occur in an instance where two factions were fighting one another, civilians were killed, and their neighbours had no choice but to bury them in mass graves, owing to time, sanitary or safety considerations.

77/ Among these are: Ovčara, allegedly containing civilians and wounded Croatian soldiers taken from the Vukovar Hospital (see paras. 265-276); Pakračka Poljana, where the Commission found 19 bodies after conducting investigations in October and November of 1993 (see paras. 277-284) and Marino Selo, where the Commission has received information regarding a mass grave containing as many as 2,500 bodies (see paras. 277-284 and annexes X, X.A, X.B).

78/ First Geneva Convention, art. 17; Third Geneva Convention, art. 120; Fourth Geneva Convention, art. 129; Protocol I, art. 34.

79/ For a more detailed discussion of the issue of missing persons, see E/CN.4/1994/26/Add.1.

79a/ See annex X.B.

80/ See annex X.B.

Notes (continued)

81/ Other information on destruction of cultural property is contained in annexes XI and XI.A. The battle and siege of Sarajevo (paras. 183-193) and particularly annex VI reveal significant and purposeful destruction of cultural and religious monuments in Sarajevo.

82/ Communiqué dated 22 September 1993 from the Zagreb Foreign Press Bureau. The Commission considers that the Croatian Army bears some responsibility in this matter.

83/ See annex XI.A.

84/ See annex XII.

85/ See also, inter alia, the Advisory Opinion of the Arbitration Commission of the European Communities' Conference on the former Yugoslavia, opinion No. 2, 11 January 1992; opinion No. 3, 11 January 1992; opinion No. 4, 11 January 1992; opinion No. 5, 11 January 1992; opinion No. 11, 11 January 1992.

86/ The sources of information are described in paras. 20-24.

87/ The territory over which most of the victimization occurred had a population base of an estimated 6 million persons, of whom 1.5 to 2 million are now refugees in more than 20 countries. Most of them were deported or forced to leave and are unable to return. The civilian and military casualties among all warring factions are reported to exceed 200,000. The number of reported mass graves, 150, discussed in paras. 254-264, tends to support the estimates of the number of casualties. Over 700 prison camps and detention facilities are reported to have existed (see paras. 216-231). The number of detainees and reports on mistreated prisoners, in for example, the Prijedor area alone exceeds 6,000 (see paras. 151-182). As stated in paragraph 153 concerning the Prijedor area, "the total number of killed and deported persons as of June 1993 is 52,811". The rape and sexual assault study and investigation discussed in paragraphs 232-253 suggests a very high number of rapes and sexual assaults in custodial and non-custodial settings (see also para. 229). Thus, the earlier projection of 20,000 rapes made by other sources are not unreasonable considering the number of actual reported cases.

88/ Establishing the truth is the best method of enhancing deterrence. In fact, early investigation of the facts, in any context of criminal activity, increases the effectiveness of future prosecution. The combination of investigation and prosecution makes deterrence more effective, thereby reducing possible violations in the future. Without effective investigations and prosecutions, the converse is true.